

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BOARD OF REGENTS,  
THE UNIVERSITY OF TEXAS SYSTEM,

Plaintiff,

V.

TOWER CAR WASH, INC., D/B/A  
TOWER EXPRESS CAR WASH, et al.

Defendants.

CIVIL ACTION NO. 1:11-cv-00125

## JOINT STIPULATION

Pursuant to this Court's June 22, 2012 Order (Docket Entry No. 47), the parties submit the following Joint Stipulation regarding the evidence to be considered by this Court in determining remedies in this action. The parties agree that the following evidence should be considered by this Court:

### A. EVIDENCE PROFFERED BY PLAINTIFF

**1.** This Court’s finding that the following is “undisputed summary-judgment proof:”

(1) The University tower has served a commanding position in Austin and throughout the state of Texas since 1937; (2) the University has used the tower marks in commerce since at least as early as 1971; (3) the University operates one of the most extensive and successful collegiate trademark licensing programs in the world; (4) use of the tower marks is controlled by extensive graphic identity standards and various license agreements; (5) the tower marks have been licensed and used in connection with numerous products and services; (6) the University licenses its marks to an array of service-oriented businesses, such as “Longhorns Energy”; (7) the University has ranked as the top-selling collegiate institution in the nation for the past six years, collecting over \$10 million in royalties in 2011.

*See* Order Granting Motion for Summary Judgment, Docket Entry No. 43 (“MSJ Order”) at 12; *see also* Plaintiff’s Motion for Summary Judgment, Docket Entry No. 36 (“Plaintiff’s MSJ”),

App. A ¶¶ 3-12, Exs. 1-9, App. B, Ex. 3 (Supplemental Interrogatory Answer No. 19), and App. C.

2. This Court’s finding that: (a) Defendant Robert E. Tesch (“Tesch”) “included a 60-foot replica of the University of Texas tower” at Defendant Tower Car Wash, Inc. d/b/a Tower Express Car Wash (“Tower Car Wash”); (b) the UT Tower Replica is “virtually identical in appearance to the actual tower on the University’s Austin campus”; and (c) Tower Car Wash “features an abstract of the University tower in the color orange as the ‘T’ in the Tower Express Car Wash logo.” *See* MSJ Order at 2.

3. This Court’s finding that the “undisputed summary-judgment proof [also] reflects” the following:

[T]he Car Wash deliberately copied the University’s tower, the tower marks, and the University’s color scheme. The undisputed facts are that the Car Wash copied the University’s tower marks and color scheme to pay homage to the University and to take advantage of the goodwill developed by the University. . . .

Further, Tesch informed third parties that the University had authorized the Car Wash to build the tower replica, to use the tower marks, and to hand out orange Tower Car Wash business cards with the 2010 University football schedule on the back of the cards. . . . Based on the undisputed summary-judgment proof, the court finds that the Car Wash adopted its marks with the intent of deriving a benefit from the University’s goodwill.

...

. . . [I]t is undisputed that the Car Wash’s intent was to benefit from the University’s efforts and there exists proof of actual confusion as to the connection or affiliation of the University with the Car Wash.

...

The University’s tower marks are distinctive marks. It is undisputed that the Car Wash was developed to take advantage of the University’s brand and goodwill developed over years in the tower marks. . . . Although the court is of the opinion that the University is likely entitled to the requested relief, the court will withhold a ruling on the appropriate remedy at this time.

*See* MSJ Order at 13-14, 18 (emphases added).

4. This Court's finding that "the Car Wash's modification to the tower replica's cupola is insufficient to dispel the likelihood of confusion in the marketplace." In particular:

The main portion of the tower replica has not been altered, and indeed the vast majority of the replica remains identical to the University tower, including its window scheme and exterior color. Additionally, Tesch acknowledges that the Car Wash retains the ability to bathe the tower replica in orange lighting . . . . Further, Tesch stated that the original cupola, which is in storage, might be reinstalled at some time in the future. Tesch also has no plans to alter the Car Wash logo, which continues to prominently display an orange depiction of the University tower as the "T" in the word "Tower".

*See* MSJ Order at 15.

5. Plaintiff's expert report finding UT's monetary remedies to be \$527,644.55 (via Defendant's profits) and \$42,211.56 (via total reasonable royalties) through December 31, 2011. Further, the expert report's finding that Defendants "would be obligated to pay a minimum annual royalty of at least \$50,000 per year for each 12-month period ending November 30." *See* Plaintiff's MSJ, App. D at 9-10.

6. Plaintiff's updated expert report finding UT's monetary remedies to be \$68,285.59 (via an 8% reasonable royalty rate) with guaranteed minimum annual royalties of \$50,000 per year. Further, the expert's finding that an alternative reasonable royalty—a corporate sponsorship rather than a license agreement—would amount to between \$50,000 and \$1,000,000 per year. *See* Declaration of Christopher A. Martinez, attached hereto as Exhibit 1; *see also* Plaintiff's MSJ, App. D at 9-10.

7. Documents not produced by Defendants during discovery in this case showing that, in a loan application dated October 22, 2009, Tesch described the Tower Car Wash project as follows:

The car wash building will be brick with a metal Spanish tile roof. Attached to the tunnel building will be a tower – replica of the University of Texas tower. The tower will include a small office and will also provide ample storage space. The “tower” was developed to add aesthetics and marketing appeal. The tower will be lit up with college colors during times of sporting and other significant events (not just UT event).

*See* Tower Car Wash Loan Application Excerpts, attached hereto as Exhibit 2. Tesch’s above description of the Tower Car Wash, submitted in order to obtain a bank loan for the car wash, included a sworn statement that his net worth was \$10,329,264. *See id.*

8. Documents produced by Defendants during discovery in this case showing that Tesch, Defendant Tesch & Associates, Inc. (“Tesch & Associates”), and Tower Car Wash entered into two contracts calling for the design and construction of a “60-foot high tower in similar design and detail as the UT Tower.” *See* Plaintiff’s MSJ, App. B, Ex. 12 (Deposition Exs. 67-68).

9. Defendants’ admission that there is a “similarity between” the UT Tower Replica and UT Tower. *See* Plaintiff’s MSJ, App. B, Ex. 3 (Supplemental Interrogatory Answer No. 16).

10. A document produced by Defendants during discovery in this case showing that Defendants received at least one work proposal mistakenly identifying the Tower Car Wash job location as “UT Tower Car Wash.” *See* Plaintiff’s MSJ, App. B, Ex. 12 (Deposition Ex. 19).

11. Tesch’s deposition testimony, *see* Plaintiff’s MSJ, App. B, Ex. 10, as to the following:

- Tesch attended The University of Texas (11:7-8);
- Tesch knew the University’s guidelines for lighting the UT Tower (77:1-18);
- Tesch has owned season tickets to UT football games for 20 years (17:6-16);
- Tesch visited the cupola of the UT Tower as a student in the 1960s (76:6-15);
- Tesch sought to “pay homage to the University” by way of the UT Tower Replica, which causes people “to think about UT” and makes them feel “good” (20:9-23, 22:1-5, 24:24-25, 73:2-9, 173:18-25);

- At least one person approached Tesch and asked if Defendants had obtained permission from the University to operate Tower Car Wash (88:16-89:1, 89:22-90:2);
- Tesch handed out orange Tower Car Wash business cards with the 2010 UT football schedule on the back of the cards (132:1-13, Deposition Ex. 37);
- The Tower Car Wash Logo is “similar to the University’s [UT Tower Marks]” (119:4-7);
- The color on the Tower Car Wash Logo, Tower Car Wash website, and Tower Car Wash signage is “a close resemblance to UT’s orange” (59:13-19, 61:13-16, 86:13-21);
- A “significant number of people who come to [Tower Car Wash] also buy[] services from the University” (168:16-23);
- Defendants’ retain the ability to bathe the UT Tower Replica in orange lighting and might reinstall the UT Tower Replica cupola at some point in the future (53:5-25, 74:2-4, 75:9-19, 80:20-81:24); and
- Defendants have no plans to alter the Tower Car Wash Logo, which continues to display an orange depiction of the UT Tower as the “T” in “Tower.” (52:18-23).

**12.** Tesch’s deposition testimony, as well as deposition exhibits, showing that a number of Tesch companies have in the past been foreclosed or filed for bankruptcy. *See* Plaintiff’s Reply to Defendant’s Response to Plaintiff’s Motion for Leave to File First Amended Complaint, Docket Entry No. 17 (“Plaintiff’s Reply”), Ex. A ¶ 4, Ex. 2.

**13.** Trent Clark’s (Tower Car Wash architect) deposition testimony that Tesch requested “a tower on my building that looks like the UT Tower.” *See* Plaintiff’s MSJ, App. B, Ex. 14 (Clark 43:21-23, 49:21-50:11, 61:12-15, 66:13-20).

**14.** Shawna Sieck’s (Tower Car Wash lighting consultant) deposition testimony, *see* Plaintiff’s MSJ, App. B, Ex. 17, as to the following:

- Tesch planned to build a replica “[o]f the UT Tower” (36:25-37:20, 43:20-44:3);
- Tesch’s explanation that “he was going to do a car wash and then have the UT Tower on it so you can see the top of it from [183A]” (36:25-37:20);
- Sieck’s conversation with Tesch about “being able to turn [the UT Tower Replica] orange after a game” (38:13-19, 45:10-13);
- Tesch’s comments that he intended the skin and windows of the UT Tower Replica to resemble those of the UT Tower (50:9-51:15);
- Tesch’s statement that he had obtained “approval” from UT to build the UT Tower Replica and operate the Tower Car Wash (51:9-15, 23-25);

- Sieck's belief that UT had approved (or licensed) Defendants' use of the UT Tower Marks (84:4-16, 87:12-20, 110:17-20);
- Sieck's professional opinion that consumers would believe that Tower Car Wash is affiliated with or licensed by UT (107:11-108:6, 109:19-22, 110:21-111:8); and
- Sieck's professional opinion that consumers would continue, despite Defendants' modifications to the UT Tower Replica, to believe that the Tower Car Wash is affiliated with, or sponsored by, UT (89:4-11).

15. Felipe Cruz's (Tower Car Wash Logo designer) deposition testimony, *see* Plaintiff's MSJ, App. B, Ex. 16, as to the following:

- The "T" in the Tower Car Wash Logo is the UT Tower (51:14-52:14);
- Cruz designed the Tower Car Wash Logo under the assumption that Tower Car Wash was associated with the University (47:7-25);
- Cruz's professional opinion that consumers would believe that Tower Car Wash is affiliated with or licensed by UT (47:7-25, 51:14-52:14, 68:12-69:20); and
- Cruz's professional opinion that consumers would continue, despite Defendants' modifications to the UT Tower Replica, to believe that the Tower Car Wash is affiliated with, or sponsored by, UT (55:11-16, 68:12-69:20).

Based on the above-proffered evidence, and the arguments and authorities presented in Plaintiff's MSJ briefing and at the June 22, 2012 hearing on remedies in this case, Plaintiff asks that this Court enter a final judgment in accordance with the Proposed Order attached to Plaintiff's MSJ, including that Defendants pay over their profits and a reasonable royalty as detailed in paragraphs 5-6 above and that Defendants be jointly and severally liable for such damages.

## **B. EVIDENCE PROFFERED BY DEFENDANTS**

1. Defendants' total sales and net profits from its opening up until May 31, 2012, as well as the Declaration of Theresa Keane, attached hereto as Exhibit 3. Defendants believe that the documents show that Tower Car Wash, Inc. has yet to turn a profit and has in fact lost \$228,838.28.

2. Tesch's deposition testimony, *see* Exhibit 4 attached hereto, as to the following:

- Regarding the question “What is wrong with them? They look pretty much like the faces on the UT Tower,” Tesch’s testimony that “[t]hat may have been part of my – part of my reason. I didn’t want it to look like the UT Tower clock face” (47:2-11, Deposition Ex. 9);
- Tesch’s belief that the Tower Car Wash Logo does not use UT’s shade of orange, and testimony that he instructed others not to violate any trademarks (55:18-25, 56:18-25);
- Defendants’ inclusion of disclaimers after receiving the University’s demand letter (62:4-14);
- Tesch’s decision not to light the Car Wash Tower in orange (74:19-75:4);
- Tesch’s referral of inquiries as to whether Defendants had received permission from the University to build Tower Car Wash to Defendants’ architect, and Tesch’s testimony that the architect had instructions not to violate trademarks (90:3-12);
- Defendants are engaged in a lawsuit with Westport Group, general contractor of Tower Car Wash (97:15-19); and
- Defendants refused UT’s requests to delay opening Tower Car Wash because they “couldn’t justify delaying it due to the cost of delaying it” (100:1-13).

3. Scott Johnston’s (Tower Car Wash general contractor Westport Group) deposition testimony that Mr. Tesch responded to the statement that the Car Wash Tower “looks like the Tower downtown” as follows: “it’s a different tower.” *See* Exhibit 5 attached hereto (51:17-52:6). As indicated above, Mr. Johnston is involved in a lawsuit with Defendants.

4. The fact that Felipe Cruz’s deposition testimony does not state that he ever inquired or was told that the Car Wash Tower was authorized by Plaintiff and his belief that Defendants had obtained the University’s permission to use the UT Tower was based on his personal assumption. *See* Plaintiff’s MSJ, App. B, Ex. 16 (52:1-14).

5. The fact that Shawna Sieck is the only witness to testify that Mr. Tesch claimed approval from Plaintiff to build the Car Wash Tower and her deposition testimony that she “had done the lighting before on the UT Tower in 1996.” Defendants believe that this shows a professional relationship between her and Plaintiff that predated her relationship with Defendant. *See* Plaintiff’s MSJ, App. B, Ex. 17 (37:1-20).

6. The fact that Defendants modified the Car Wash Tower approximately four months after opening, as illustrated in Exhibit 6.

7. Defendants' proposed modification to the Car Wash Tower, attached hereto as Exhibit 7.<sup>1</sup>

8. The University's "Office of Trademark Licensing: Trademark Policy" on its website at <http://www.utexas.edu/trademarks/policy.html> which states that "The following will not be licensed" ... "Services--except in accordance with the special requirements of the Office of General Counsel applicable to services."

9. The fact that after receiving Plaintiff's cease-and-desist letter, Defendants did seek and were denied a license to use the UT Tower. *See* Craig Westemeier's deposition testimony, attached hereto as Exhibit 8, at 23-24.

10. Third-party uses of the UT Tower, *see* Defendants' Response to Plaintiff's Motion for Summary Judgment, Docket Entry No. 40 ("Defendants' Response"), Ex. E, in and around Austin, TX, which Defendants believe shows that they had a good-faith belief that they could copy the UT Tower.

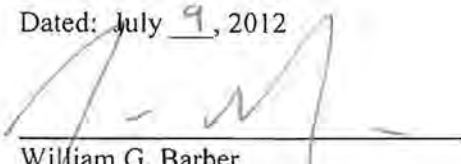
Based on the above evidence, Defendants ask the court issue an injunction in accordance with the proposed order attached as Exhibit 9, and deny Plaintiff's request for profits, and a royalty.

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<sup>1</sup> Plaintiff does not object to the Court considering Defendants' proposed modification to the UT Tower Replica, but does not believe it is sufficient to stay a "safe distance" from the UT Tower Marks.



Dated: July 9, 2012

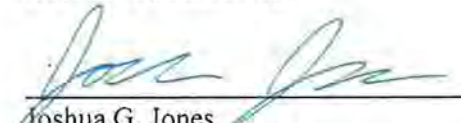


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ATTORNEYS FOR PLAINTIFF

Respectfully submitted,



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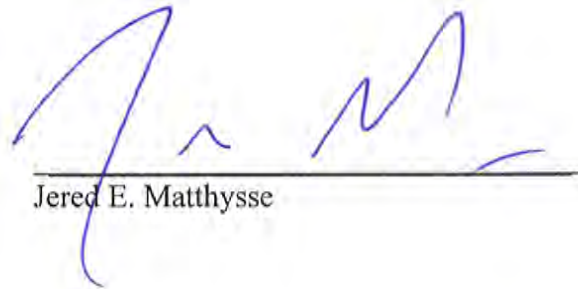
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401 Congress Avenue, Suite 1540  
Austin, Texas 78701  
(512) 687.6221

ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on July 9, 2012, the foregoing was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Joshua G. Jones  
The Law Office of Joshua G. Jones  
401 Congress Avenue, Suite 1540  
Austin, TX 78701



\_\_\_\_\_

Jered E. Matthyse

**EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BOARD OF REGENTS,	§	
THE UNIVERSITY OF TEXAS SYSTEM,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:11-cv-00125
	§	
TOWER CAR WASH, INC. D/B/A	§	
TOWER EXPRESS CAR WASH, ROBERT	§	
E. TESCH, and TESCH & ASSOCIATES,	§	
INC.,	§	
	§	
	§	
Defendants.	§	

**DECLARATION OF CHRISTOPHER A. MARTINEZ**

I, Christopher A. Martinez, declare as follows:

1. I make this declaration based on my own personal knowledge and could and would competently testify as to the matters set forth below if called upon to do so.

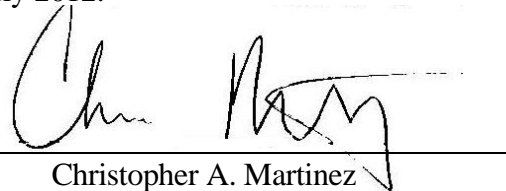
2. I was engaged by Plaintiff's counsel Pirkey Barber LLP to evaluate the damages suffered by Plaintiff related to the alleged infringement by Defendants' use of certain trademarks related to the image of the iconic 307-foot tower (the "UT Tower"), which is located at the University of Texas at Austin.

3. My expert report, submitted on November 19, 2011 and updated on February 23, 2012, provides the bases for my calculations of Defendants' profits and reasonable royalties. Since that time, I have reviewed updated sales figures from Defendants for the period of December 1, 2010 through June 25, 2012 and calculated Defendants' net sales to be \$853,569.85 and reasonable royalties to be \$68,285.59, with guaranteed minimum annual royalties of \$50,000 per year for each 12-month period ending November 30.

4. The reasonable royalty noted above—an 8% rate—and the guaranteed minimum annual royalties of \$50,000 are not based on any rule of thumb, but are instead based on previous and similar licenses entered into by Plaintiff. For example, the Collegiate Licensing Company notes that Plaintiff's standard royalty rate is 10%. Further, Plaintiff's license agreement with H<sub>2</sub>Orange, LLC (for UT Tower water bottles) included an identical royalty rate of 8%, as well as guaranteed minimum annual royalties of \$250,000 for each of the first two years (and \$500,000 per year thereafter). Corporate sponsorship programs are also available for affiliation with UT, including the use of certain trademarks, and range from \$50,000 to \$1,000,000 per year.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in San Francisco, California, this 3rd of July 2012.



Christopher A. Martinez

EXHIBIT 2

## EXHIBIT 1

### HISTORY AND DESCRIPTION OF BUSINESS ANALYSIS OF MANAGEMENT ABILITY

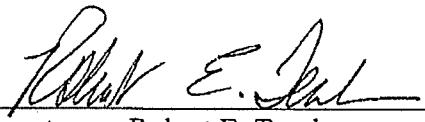
The proposed Tower Car Wash will be an express exterior conveyor was with a 115 foot building tunnel with a 145 foot conveyor (part of which is outside of the tunnel. The car wash will have two greeter/menu boards/pay station lanes that will flow into the wash tunnel. There will be 18 vacuum stations. As discussed above use of the vacuums is free – part of the wash purchase. The equipment will allow for up to five cars in the tunnel at a time and will have the capacity to wash up to 150 cars per hour. The actual car wash time will be approximately 3 minuets. The site property also has space for a port cachet that may be used for detailing and additional non- automated services.

The car wash building will be brick with a metal Spanish tile roof. Attached to the tunnel building will be a tower – replica of the University of Texas tower. The tower will include a small office and will also provide ample storage space. The “tower” was developed to add aesthetics and marketing appeal. The tower will be lit up with college colors during times of sporting and other significant events (not just UT event). The business will have a frequent washer program, as well as other promotional programs some of which will be related to sporting and Cedar Park specific community events.

The Tower Car Wash will be located on a prime site on Whitestone Boulevard (FM 1431) very near to the intersection of Highway 183A. Toll road Highway 183A opened in 2006; and thus, has spurred the area development. The applicant site is directly across the street from the 1890 Ranch shopping center which opened in 2007. The 960,000 square foot “big box” power retail center is anchored with a Super Target, Academy and Pets Mart. Other retail in the center includes Hobby Lobby, Office Max, Beals as well as a Cinemark Cinema. In addition, the new Cedar Park Regional Medical Center and Professional Building (opened 2008) are located just behind the 1890 Ranch retail center. Area subdivisions include: The Oaks, Silver Ranch, Creekview, Willow Oak, Live Oak, White Oak, Lynn Wood, etc. Home construction in the area began in 2005 and still has construction in progress.

The City of Cedar Park is a bedroom community located northwest of Austin. Williamson County is one of the fastest growing counties in the nation with Cedar Park being integral to the growth. The applicant site is in the middle of the most rapidly growing part of Williamson County. The site traffic count is 34,868 cars per day. The 2008 and 2013 population for a 3-mile radius of the site is estimated at 55,106 and 72,514, respectively. The number of household for 2008 and 2013 are estimated at 18,039 and 23,580 with 2008 average and medium household income estimated at \$77,238 and \$69,258. Considering the upscale nature of the area, the significant new retail, the newly opened hospital, the significant new upscale housing developments and the high traffic flow, the site appears good for the proposed tunnel car wash.

Bob Tesch has been in the real estate industry since 1971. For the past twenty-five years, he has owned and operated Tesch & Associates, Inc. Mr. Tesch is a civic and industry leader in Central Texas. In 2003, Governor Perry commissioned him Presiding Officer of Texas' first Regional Mobility Authority. In 2007, Governor Perry re-appointed Mr. Tesch to the Mobility Authority's board where he is serving his sixth year as the Authority's Chairman. Sandra Tesch has minimal involvement in the family businesses. Mr. Tesch has already attended the car wash college program offered by the equipment manufacture. The program is a tuition based one week classroom program held at the manufacturer's facility. It includes a section on management, maintenance and repair.

  
\_\_\_\_\_  
Signature Robert E. Tesch

10-22-09  
Date




 OMB Approval No. 3245-0188  
 EXPIRATION DATE: 03/31/2011

**PERSONAL FINANCIAL STATEMENT**

U.S. SMALL BUSINESS ADMINISTRATION

 As of July 31, 2009

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any other person or entity providing a guaranty on the loan.

 Name Robert E. Tesch  
Sandra L. Tesch Business Phone (512) 259-5880

 Residence Address 18175 Ronald Reagan Blvd. Residence Phone (512) 970-0530

 City, State, & Zip Code Leander, TX 78628

 Business Name of Applicant/Borrower Tower Car Wash, Inc.

ASSETS		LIABILITIES	
	(Omit Cents)		(Omit Cents)
Cash on hand & in Banks . . . . .	\$ <u>400,819</u>	Accounts Payable . . . . .	\$ _____
Savings Accounts . . . . .	\$ _____	Notes Payable to Banks and Others. . . . .	\$ _____
IRA or Other Retirement Account . . . . .	\$ _____	(Describe in Section 2)	
Accounts & Notes Receivable. . . . .	\$ _____	Installment Account (Auto) . . . . .	\$ _____
Life Insurance-Cash Surrender Value Only . . . . .	\$ _____	Mo. Payments \$ _____	
(Complete Section 8)		Installment Account (other). . . . .	\$ _____
Stocks and Bonds . . . . .	\$ _____	Mo. Payments \$ _____	
(Describe in Section 3)		Loans on Life Insurance . . . . .	\$ _____
Real Estate . . . . .	\$ <u>5,786,456</u>	Mortgages on Real Estate . . . . .	\$ <u>1,935,635</u>
(Describe in Section 4)		(Describe in Section 4)	
Automobile-Present Value . . . . .	\$ _____	Unpaid Taxes . . . . .	\$ _____
Other Personal Property . . . . .	\$ _____	(Describe in Section 6)	
(Describe in Section 5)		Other Liabilities . . . . .	\$ _____
Other Assets . . . . .	\$ <u>6,077,624</u>	(Describe in Section 7)	
(Describe in Section 5)		Total Liabilities . . . . .	\$ <u>1,935,635</u>
Total \$ <u>12,264,899</u>		Net Worth . . . . .	\$ <u>10,329,264</u>
		Total \$ <u>12,264,899</u>	

**Section 1. Source of Income**

 Salary . . . . . \$ \_\_\_\_\_  
 Net Investment Income . . . . . \$ \_\_\_\_\_  
 Real Estate Income . . . . . \$ \_\_\_\_\_  
 Other Income (Describe Below)\* . . . . . \$ \_\_\_\_\_

**Contingent Liabilities**

 As Endorser or Co-Maker . . . . . \$ \_\_\_\_\_  
 Legal Claims & Judgments . . . . . \$ \_\_\_\_\_  
 Provision for Federal Income Tax . . . . . \$ \_\_\_\_\_  
 Other Special Debt . . . . . \$ \_\_\_\_\_

Description of Other Income in Section 1.

\*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Bank and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Name and Address of Noteholders (s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

SBA Form 413 (10-08) Previous Editions Obsolete

(Turn to)

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).					
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value
	See attached schedule				

Section 4. Real Estate Owned. (List each parcel separately. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).			
Type of Property	Property A	Property B	Property C
Address	See attached schedule		
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency).	
Notes Receivable - \$1,989,596	
Other Assets - \$500,000	
See attached schedules.	

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches).	

Section 7. Other Liabilities. (Describe in detail).	

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)	

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: <i>Robert E. Tesch</i>	Robert E. Tesch	Date: 10-22-09	Social Security Number: 453-66-6997
Signature: <i>Sandra L. Tesch</i>	Sandra L. Tesch	Date: 10-22-09	Social Security Number: 084-36-2792

**PLEASE NOTE:** The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Office, Paper Reduction Project (3245-Q1E6), Office of Management and Budget, Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BOARD OF REGENTS,  
THE UNIVERSITY OF TEXAS SYSTEM,  
  
Plaintiff,

v.

TOWER CAR WASH, INC., D/B/A  
TOWER EXPRESS CAR WASH et. al.

Defendants.

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§  
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§  
§  
§  
§  
§

CIVIL ACTION NO. 1:11-cv-00125

**Declaration of**

I, Theresa Keane, declare as follows:

1. I make this declaration based on my own personal knowledge and could and would competently testify as to the matters set forth below if called upon to do so.
2. I am employed by Mr. Bob Tesch to handle the accounting of Tower Car Wash Inc.
3. A true and correct copy of Tower Car Wash Inc.'s total sales and net profits from its opening up until May 31, 2012 is included and reflected in the documents provided.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Austin, TX this 2<sup>nd</sup> day of July 2012.

  
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# General Sales Report

Tower Express Car Wash  
Tower Car Wash

Wed 12/01/2010 12:00:00am  
Fri 12/31/2010 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
<b>EXPRESS SALES (Exterior Only)</b>				<b>TOTAL:</b>		<b>14</b>	<b>71.00</b>
<b>WASH SALES-</b>				<b>GROSS FULL SERVICE</b>		<b>1,377</b>	<b>15,420.00</b>
Tower Splash	6.00	124	744.00	<b>LESS: FULL SERVICE COUPONS-</b>			
Tower Shine	9.00	338	3,042.00	50% Dec Shine +	-8.00	24	-192.00
Tower Supreme	12.00	1,431	17,172.00	50% Dec Supr +	-11.00	116	-1,276.00
<b>TOTAL:</b>		<b>1,893</b>	<b>20,958.00</b>	50% Grnd Op Shine +	-8.00	90	-720.00
<b>Groupon Ext Washes</b>				50% Grnd Op Supr +	-11.00	637	-7,007.00
<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>	Detail FS Adjuster	-21.00	12	-252.00
<b>EXPRESS EXTRAS-</b>				Employee Detail	-7.00	1	-7.00
Rain-X	3.00	18	54.00	Employee Supreme +	-11.00	2	-22.00
<b>TOTAL:</b>		<b>18</b>	<b>54.00</b>	<b>TOTAL:</b>		<b>882</b>	<b>-9,476.00</b>
<b>OTHER WASH SERVICES-</b>				<b>NET FULL SERVICE SALES:</b>			<b>5,944.00</b>
<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>	<b>NET WASH SALES:</b>			<b>23,162.00</b>
<b>GROSS EXPRESS SALES-</b>			<b>21,012.00</b>	<b>PREPAIDS</b>			
<b>LESS: WASH COUPONS-</b>				<b>VIP PLANS</b>			
50% Dec Splash	-3.00	8	-24.00	<b>VIP PLANS SOLD-</b>			
50% Dec Supreme	-6.00	38	-228.00	<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>
50% Dec Shine	-5.00	7	-35.00	<b>VIP PLANS RECHARGED-</b>			
50% Grnd Op Supreme	-6.00	296	-1,776.00	<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>
50% Grnd Op Splash	-3.00	57	-171.00	<b>VIP PLANS REDEEMED-</b>			
50% Grnd Op Shine	-5.00	67	-335.00	<b>TOTAL:</b>			<b>0.00</b>
<b>TOTAL:</b>		<b>473</b>	<b>-2,569.00</b>	<b>VIP PLANS REDEEMED-</b>			
<b>LESS: WASH DISCOUNTS-</b>				<b>TOTAL:</b>			<b>0.00</b>
Bob's Promo Disc	-103.33	3	-310.00	<b>VIP PLANS REDEEMED-</b>			
Misc. Wash Discount	-7.00	1	-7.00	<b>TOTAL:</b>			<b>0.00</b>
Ppd Splash Disc	-6.00	1	-6.00	<b>NET VIP PLAN SALES:</b>			<b>0.00</b>
Rewash-Base	-13.43	49	-658.00	<b>PREPAID CARDS</b>			
Manager's Comp Disc.	-13.06	18	-235.00	<b>PREPAID CARDS SOLD-</b>			
Ppd Shine Disc	-9.00	1	-9.00	Bonus Bucks \$100	100.00	19	1,900.00
<b>TOTAL:</b>		<b>73</b>	<b>-1,225.00</b>	Bonus Bucks \$25	25.00	23	575.00
<b>NET EXPRESS SALES:</b>		<b>2,457</b>	<b>17,218.00</b>	Bonus Bucks \$50	50.00	16	800.00
<b>FULL SERVICE SALES (EXTERIOR AND INTERIOR)</b>				Generic Gift Card	13.96	24	335.00
<b>FULL SERVICE WASHES-</b>				Holiday Gift Card	20.84	25	521.00
Tower Shine Plus	8.23	227	1,868.00	4 Splash Card	24.00	1	24.00
Tower Supreme Plus	10.37	1,051	10,899.00	4 Shine Card	36.00	1	36.00
Hand Wax Pkg	15.31	16	245.00	Rewash Supreme	0.00	4	0.00
Super Clean Interior	27.50	54	1,485.00	Rewash Supreme Plus	0.00	1	0.00
Tower Complete	56.80	15	852.00	<b>TOTAL:</b>		<b>114</b>	<b>4,191.00</b>
<b>TOTAL:</b>		<b>1,363</b>	<b>15,349.00</b>	<b>PREPAID CARDS REDEEMED-</b>			
<b>GROUPON FULL SERVICE WASHES-</b>				Ppd Gift Card Rdmd	-15.36	11	-169.00
<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>	Ppd Splash Rdmd	-6.00	2	-12.00
<b>FULL SERVICE EXTRA SALES-</b>				Rewash Supreme + Rdm	-21.00	1	-21.00
Interior Dressing	4.00	11	44.00				
Tower Shine Upgrade	9.00	3	27.00				

# General Sales Report

Tower Express Car Wash  
Tower Car Wash

Wed 12/01/2010 12:00:00am

Fri 12/31/2010 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
Rewash Supreme Rdmd	-12.00	3	-36.00				
<b>TOTAL:</b>			<b>-238.00</b>	<b>OVER / SHORT (-)</b>			
<b>NET PREPAID CARD SALES:</b>			<b>3,953.00</b>	<b>CASH:</b>			<b>-477.00</b>
				<b>XPT ACCEPTORS:</b>			<b>0.00</b>
				<b>XPT DISPENSERS:</b>			<b>850.00</b>
				<b>CHECK:</b>			<b>0.00</b>
				<b>TOTAL:</b>			<b>373.00</b>
<b>OTHER PREPAIDS SOLD</b>				<b>CREDIT CARD:</b>			
<b>GROUPON SOLD-</b>				American Express			-2,633.00
<b>TOTAL:</b>			<b>0.00</b>	Discover			-560.00
<b>GROUPON REDEEMED:</b>				Visa / MC			-18,378.00
<b>TOTAL:</b>	0.00	0	<b>0.00</b>	<b>TOTAL:</b>			<b>-21,571.00</b>
<b>GROUPON PAYMENT-</b>				<b>OTHER TENDERS:</b>			
<b>TOTAL:</b>	0.00	0	<b>0.00</b>	<b>TOTAL:</b>			<b>0.00</b>
<b>WEBSITE SOLD-</b>				<b>XPT BALANCING:</b>			<b>0.00</b>
Cert Web Complete	75.00	1	75.00	(Should be \$0)			
Cert Web Shine	9.00	1	9.00				
Cert Web Shine+	16.00	1	16.00				
<b>TOTAL:</b>			<b>100.00</b>	<b>REPORT BALANCE:</b>			<b>0.00</b>
<b>NET OTHER PREPAID</b>			<b>100.00</b>	(Should be \$0)			
<b>LESS PAIDOUTS-</b>							
<b>TOTAL:</b>		0	<b>0.00</b>	Cashier: _____ Empl #: _____			
<b>FUNDRAISERS</b>				Reviewed By: _____ On: _____			
<b>FUNDRAISERS-</b>							
20% Fundrsr Adj	-2.69	7	-18.80	<b>Total Express Count</b>			<b>1,893</b>
Cedar Park HS	2.69	7	18.80	<b>Express \$/Car</b>			<b>9.10</b>
<b>TOTAL:</b>		<b>14</b>	<b>0.00</b>	<b>Total FS Count</b>			<b>1,363</b>
<b>SALES TAX-</b>				<b>Exterior \$/Car-</b>			<b>4.36</b>
*Tax Exempt Sale	0.00	70	0.00	<b>Total Car Count</b>			<b>3,256</b>
<b>TOTAL:</b>			<b>0.00</b>	<b>Total \$/Car</b>			<b>8.36</b>
<b>TOTAL TO ACCOUNT FOR:</b>			<b>27,215.00</b>				
<b>CASH DRAWER-</b>							
Beginning Drawer		0	0.00				
Ending Drawer		4	-118.00				
<b>TOTAL:</b>			<b>-118.00</b>				
<b>TOTAL XPT CASH:</b>			<b>-5,899.00</b>				
<b>HOUSE ACCOUNTS-</b>							
Employee Charge		0	0.00				
House Acct Charge		0	0.00				
House Acct Payment		0	0.00				
<b>NET CHANGE IN A/R:</b>			<b>0.00</b>				



# General Sales Report

Tower Express Car Wash  
Tower Car Wash

Sat 01/01/2011 12:00:00am  
Sat 12/31/2011 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
<b>EXPRESS SALES (Exterior Only)</b>				\$2 off ZIP 78681 Ext	-2.00	39	-78.00
<b>WASH SALES-</b>				\$2 off ZIP 78717 Ext	-2.00	19	-38.00
Tower Splash	6.00	11,043	66,258.00	\$2 off ZIP 78682 Ext	-2.00	1	-2.00
Tower Shine	9.00	6,923	62,307.00	\$2 off ZIP 12345 Ext	-2.00	17	-34.00
Tower Shine w/Triple	9.00	22	198.00	\$2 off ZIP 78660 Ext	-2.00	1	-2.00
Tower Supreme	12.00	7,211	86,532.00	\$4 Off Detail Pkgs	-4.00	7	-28.00
<b>TOTAL:</b>		<b>25,199</b>	<b>215,295.00</b>	\$2 Off Exp Int 88012	-2.00	17	-34.00
<b>Groupon Ext Washes</b>				\$2 off TWT 55012 E E	-2.00	182	-364.00
G2 Splash Wash	6.00	327	1,962.00	\$2 off TWT 52012 E E	-2.00	47	-94.00
G2 Supreme Wash	12.00	222	2,664.00	\$2 off TWT 53012 E E	-2.00	234	-468.00
Groupon TwrSupr.(12)	12.00	2,538	30,456.00	\$3 Off Full Service	-3.00	37	-111.00
<b>TOTAL:</b>		<b>3,087</b>	<b>35,082.00</b>	\$5 off Hand Wax 5000	-5.00	56	-280.00
<b>EXPRESS EXTRAS-</b>				\$2 off TWT 62012 E E	-2.00	25	-50.00
Rain-X	2.19	1,586	3,478.00	\$2 off TWT 65012 E E	-2.00	50	-100.00
<b>TOTAL:</b>		<b>1,586</b>	<b>3,478.00</b>	\$2 off TWT 65012 F/S	-2.00	40	-80.00
<b>OTHER WASH SERVICES-</b>				\$2 Off Exp Interior	-2.00	53	-106.00
<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>	\$2 off TWT 62012 F/S	-2.00	7	-14.00
<b>GROSS EXPRESS SALES-</b>				\$2 off TWT 65012 DET	-2.00	5	-10.00
<b>LESS: WASH COUPONS-</b>			<b>253,855.00</b>	\$2 off TWT 55012 F/S	-2.00	75	-150.00
\$2 off TWT 52012 DET	-4.64	33	-153.00	\$3 Off Holiday 03	-3.00	1,558	-4,674.00
\$3 off E E WEB 15009	-3.00	137	-411.00	\$5 off TSP 11	-5.00	2	-10.00
\$4 off F/S WEB 15010	-4.00	138	-552.00	Free Tower Supreme	-12.00	8	-96.00
\$4 off F/S V P 14010	-4.00	253	-1,012.00	\$2 Off Exp Int 8000	-2.00	8	-16.00
\$3 off E E VP 14009	-3.00	380	-1,140.00	\$3 Off F/S 86012	-3.00	44	-132.00
\$5 Off DET CI 12011	-5.00	65	-325.00	\$3 Off F/S 88012	-3.00	10	-30.00
\$9 Off TS Frost Bank	-9.00	29	-261.00	\$2 off Ath. Card	-2.00	2	-4.00
\$2 Off Exp Int 82012	-2.00	104	-208.00	\$2 off TWT 53012 DET	-2.00	9	-18.00
\$3 Off F/S 8000	-3.00	10	-30.00	\$2 off TWT 55012 DET	-2.00	13	-26.00
\$5 off TSP 10	-5.00	43	-215.00	\$2 off TWT 53012 F/S	-2.00	122	-244.00
\$2 Off Exp Int 86012	-2.00	111	-222.00	\$2 off TWT 52012 F/S	-2.00	18	-36.00
\$2 Off Exp Int 85012	-2.00	313	-626.00	\$5 off TSP 14	-5.00	3	-15.00
\$4 Off Detail 86012	-4.00	11	-44.00	\$2 off	-2.00	358	-716.00
\$4 Off Detail 85012	-4.00	25	-100.00	Free Tower Splash	-3.00	2	-6.00
\$4 Off Detail 82012	-4.00	5	-20.00	\$5 off TSP 12	-5.00	8	-40.00
\$3 Off F/S 85012	-3.00	178	-534.00	\$5 off TSP 13	-5.00	2	-10.00
\$3 Off F/S 82012	-3.00	40	-120.00	<b>TOTAL:</b>		<b>5,952</b>	<b>-17,855.00</b>
\$4 Off Detail 8000	-4.00	2	-8.00	<b>LESS: WASH DISCOUNTS-</b>			
50% Grnd Op Supreme	-6.00	1	-6.00	ARM Ppd Splash Disc	-6.00	19	-114.00
\$5 off DET WEB 15011	-5.00	26	-130.00	ARM Ppd Suprm Disc	-12.00	25	-300.00
\$5 Off VIP 25005	-5.00	142	-710.00	ARM Ppd Suprm+ Disc	-21.30	10	-213.00
\$3 off E E HO 16009	-3.00	290	-870.00	ARM Ppd Shine+ Disc	-16.00	19	-304.00
\$2 off ZIP 78680 Ext	-2.00	1	-2.00	Ppd Splash Disc	-6.00	18	-108.00
\$2 off ZIP 78664 Ext	-2.00	3	-6.00	Employee Splash	-3.00	309	-927.00
\$2 off ZIP 78642 Ext	-2.00	5	-10.00	GrouponNow 70001disc	-35.00	4	-140.00
\$10 Off VIP 25005	-10.00	51	-510.00	Employee Supreme	-6.00	197	-1,182.00
\$2 off ZIP 78613 Ext	-2.00	148	-296.00	Employee Shine	-5.00	31	-155.00
\$2 off ZIP 78641 Ext	-2.00	68	-136.00	DONATION Comp Disc.	-49.50	2	-99.00
\$4 off F/S HO 16010	-4.00	223	-892.00	Rewash-Base	-10.36	682	-7,063.00
\$5 off DET HO 16011	-5.00	38	-190.00	Manager's Comp Disc.	-17.12	193	-3,304.58
				Ppd Supreme Disc	-12.00	9	-108.00
				Ppd Shine Disc	-9.00	14	-126.00
				ARM Ppd Shine Disc	-8.95	59	-528.29
				GrouponNow 63011disc	-35.00	1	-35.00



# General Sales Report

Tower Express Car Wash  
Tower Car Wash

Sat 01/01/2011 12:00:00am  
Sat 12/31/2011 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
NOW 70002disc	-12.00	8	-96.00	<b>PREPAIDS</b>			
<b>TOTAL:</b>		<b>1,600</b>	<b>-14,802.87</b>	<b>VIP PLANS</b>			
<b>NET EXPRESS SALES:</b>		<b>37,424</b>	<b>221,197.13</b>	<b>VIP PLANS SOLD-</b>			
<b>FULL SERVICE SALES (EXTERIOR AND INTERIOR)</b>				VIP Monthly Splash	10.84	47	509.50
<b>FULL SERVICE WASHES-</b>				VIP Monthly Shine	14.20	71	1,008.04
Tower Splash Plus	14.00	343	4,802.00	VIPMthlyShine w/Trp	8.58	16	137.24
Tower Shine Plus	16.59	6,161	102,200.00	VIP Monthly Suprm	16.55	43	711.65
Tower Supreme Plus	21.50	6,207	133,446.00	VIP Monthly Splash+	25.61	5	128.06
Hand Wax Pkg	36.06	311	11,215.00	VIP Monthly Shine+	28.87	34	981.45
Super Clean Interior	46.50	760	35,340.00	VIPMthlyShine+w/Trp	7.41	3	22.23
Tower Complete	76.24	217	16,545.00	VIP Monthly Suprm+	37.68	22	828.85
<b>TOTAL:</b>		<b>13,999</b>	<b>303,548.00</b>	<b>TOTAL:</b>		<b>241</b>	<b>4,327.02</b>
<b>GROUPON FULL SERVICE WASHES-</b>				<b>VIP PLANS RECHARGED-</b>			
G2 Splash+ Wash	14.00	150	2,100.00	VIP Splash Rchg	19.99	183	3,658.17
Groupon TwrShne+(16)	4.00	619	2,476.00	VIP Shine Rchg	24.99	237	5,922.63
Groupon TwrSupr+(21)	9.00	14	126.00	VIPShine w/Trp Rchg	24.99	29	724.71
G2 Supreme+ Wash	24.00	132	3,168.00	VIP Suprm Rchg	34.99	150	5,248.50
Groupon TwrCmplt(85)	63.00	4	252.00	VIP Splash+ Rchg	39.99	6	239.94
<b>TOTAL:</b>		<b>919</b>	<b>8,122.00</b>	VIP Shine+ Rchg	46.12	134	6,180.66
<b>FULL SERVICE EXTRA SALES-</b>				VIPShine+ w/Trp Rchg	52.99	5	264.95
Interior Dressing	4.00	182	728.00	VIP Suprm+ Rchg	61.12	92	5,623.08
A-la-carte	14.22	100	1,422.45	<b>TOTAL:</b>		<b>836</b>	<b>27,862.64</b>
Tower Shine Upgrade	9.00	179	1,611.00	<b>VIP PLANS REDEEMED-</b>			
<b>TOTAL:</b>		<b>461</b>	<b>3,761.45</b>	VIP Suprm Pkg.	0.00	576	0.00
<b>GROSS FULL SERVICE</b>		<b>15,379</b>	<b>315,431.45</b>	VIP Splash Sold Pkg.	0.00	19	0.00
<b>LESS: FULL SERVICE COUPONS-</b>				ARM Redeemer Pkg.	0.00	3,237	0.00
\$2 off ZIP 12345 FS	-2.00	16	-32.00	VIPShine w/T SldPkg	0.00	22	0.00
\$2 off ZIP 78613 FS	-2.00	103	-206.00	VIP Shine+ Pkg.	0.00	405	0.00
\$2 off ZIP 78626 FS	-2.00	1	-2.00	VIP Shine+ Sold Pkg.	0.00	19	0.00
\$2 off ZIP 78630 FS	-2.00	1	-2.00	VIP Suprm+ Pkg.	0.00	340	0.00
\$2 off ZIP 78641 FS	-2.00	45	-90.00	VIP Suprm+ Sold Pkg.	0.00	10	0.00
\$2 off ZIP 78642 FS	-2.00	2	-4.00	VIP Shine w/T Pkg.	0.00	124	0.00
\$2 off ZIP 78664 FS	-2.00	2	-4.00	VIP Splash + Pkg.	0.00	22	0.00
\$2 off ZIP 78681 FS	-2.00	25	-50.00	VIP Shine+w/Trp Pkg.	0.00	21	0.00
\$2 off ZIP 78717 FS	-2.00	10	-20.00	VIP Shine Pkg.	0.00	1,021	0.00
Detail FS Adjuster	-21.00	23	-483.00	VIP Shine Sold Pkg.	0.00	41	0.00
Employee Detail	-22.50	7	-157.50	VIP Splash Pkg.	0.00	727	0.00
Employee Shine +	-8.00	38	-304.00	VIP Suprm Sold Pkg.	0.00	25	0.00
Employee Supreme +	-11.00	25	-275.00	VIP Splash.	-5.49	725	-3,978.00
Ppd Shine + Disc	-16.00	12	-192.00	VIP Shine.	-9.00	1,020	-9,180.00
Ppd Supreme + Disc	-21.00	5	-105.00	VIP Shine w/Trp.	-12.00	124	-1,488.00
<b>TOTAL:</b>		<b>315</b>	<b>-1,926.50</b>	VIP Suprm.	-12.00	576	-6,912.00
<b>NET FULL SERVICE SALES:</b>			<b>313,504.95</b>	VIP Splash+	-14.00	22	-308.00
<b>NET WASH SALES:</b>			<b>534,702.08</b>	VIP Shine+	-16.54	405	-6,699.00
				VIP Suprm+	-21.61	340	-7,347.00
				VIPMthlyShine+w/Trp.	-24.00	21	-504.00
				<b>TOTAL:</b>			<b>-36,416.00</b>
				<b>VIP PLANS REDEEMED-</b>			



Tower Express Car Wash  
Tower Car Wash

## General Sales Report

Sat 01/01/2011 12:00:00am  
Sat 12/31/2011 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
Switch VIP Plan	0.00	32	0.00	<b>GROUPON SOLD-</b>			
Discontinue VIP Plan	0.00	51	0.00	Groupon ExpHndWx(45)	23.00	2	46.00
Terminate VIP Plan	0.00	10	0.00	Groupon SupClnIn(55)	33.00	11	363.00
VIP Splash Rfnd	-9.03	3	-27.09	Groupon Tower Sold	0.00	108	0.00
VIP Shine Rfnd	-10.30	22	-226.53	<b>TOTAL:</b>			<b>409.00</b>
VIP Shine w/Trp Rfnd	-24.18	1	-24.18	<b>GROUPON REDEEMED:</b>			
VIP Suprm Rfnd	-17.20	4	-68.81	G-NOW Tower Disc	-15.05	37	-557.00
VIP Shine+ Rfnd	-25.07	9	-225.64	G2 Splash Wash RMD	-6.00	327	-1,962.00
VIP Suprm+ Rfnd	-22.97	3	-68.90	G2 Supreme Wash RMD	-12.00	222	-2,664.00
<b>TOTAL:</b>			<b>-641.15</b>	G2 Splash+ Wash RMD	-14.00	150	-2,100.00
<b>NET VIP PLAN SALES:</b>			<b>-4,867.49</b>	G2 Supreme+ Wash RMD	-24.00	132	-3,168.00
				<b>TOTAL:</b>	-12.04	<b>868</b>	<b>-10,451.00</b>
<b>PREPAID CARDS</b>				<b>GROUPON PAYMENT-</b>			
<b>PREPAID CARDS SOLD-</b>				G1 Groupon Payment	10,323.00	1	10,323.00
Bonus Bucks \$100	100.00	31	3,100.00	G2 Groupon Payment	5,357.00	2	10,714.00
Bonus Bucks \$25	25.00	31	775.00	<b>TOTAL:</b>	7,012.33	<b>3</b>	<b>21,037.00</b>
Bonus Bucks \$50	50.00	18	900.00	<b>WEBSITE SOLD-</b>			
Generic Gift Card	20.73	145	3,006.00	\$25 Gift Card	25.00	2	50.00
Birthday Gift Card	85.00	1	85.00	Cert Web Complete	78.33	3	235.00
Holiday Gift Card	23.30	27	629.00	Cert Web Shine+	19.00	5	95.00
4 Splash Card	24.00	18	432.00	Cert Web Splash+	14.00	3	42.00
4 Shine Card	36.00	14	504.00	Cert Web Super Clean	45.00	4	180.00
4 Supreme Card	48.00	9	432.00	Cert Web Supreme	12.00	1	12.00
4 Shine + Card	64.00	12	768.00	Cert Web Supreme+	22.29	7	156.00
4 Supreme + Card	84.00	5	420.00	Cert Web Wax	35.00	1	35.00
1 Free Tower Splsh W	0.00	10	0.00	Club \$100 Card	100.00	3	300.00
Twr Comp DONATION	75.00	1	75.00	Club \$25 Card	25.00	2	50.00
Rewash Splash	0.00	1	0.00	Club \$50 Card	50.00	1	50.00
Rewash Supreme Plus	0.00	8	0.00	Hol. \$25 Gift Card	25.00	1	25.00
Raincheck	0.00	2	0.00	Hol. \$50 Gift Card	50.00	1	50.00
Voucher-Cash	2.62	21	55.05	<b>TOTAL:</b>			<b>1,280.00</b>
<b>TOTAL:</b>		<b>354</b>	<b>11,181.05</b>	<b>NET OTHER PREPAID</b>			<b>12,275.00</b>
<b>PREPAID CARDS REDEEMED-</b>				<b>LESS PAIDOUTS-</b>			
Free Splash Rdmd	-6.00	5	-30.00	<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>
Groupon Tower Rdmd	-12.00	2,540	-30,480.00	<b>FUNDRAISERS</b>			
Ind. Ppd Dollar Card	0.00	1	0.00	<b>FUNDRAISERS-</b>			
Ppd Gift Card Rdmd	-13.61	554	-7,537.50	20% Fundrsr Adj	-2.43	28	-68.00
Ppd Shine + Rdmd	-16.00	28	-448.00	Cedar Park HS	3.02	8	24.20
Ppd Shine Rdmd	-8.95	38	-340.00	RHS - Royals Dance	2.19	20	43.80
Ppd Splash Rdmd	-5.86	42	-246.00	16 U Plat. Soft Ball	0.00	25	0.00
Ppd Supreme + Rdmd	-21.00	16	-336.00	<b>TOTAL:</b>		<b>81</b>	<b>0.00</b>
Ppd Supreme Rdmd	-12.00	28	-336.00	<b>SALES TAX-</b>			
Redeem IOU	-4.00	1	-4.00	Tax Exempt Sale	0.00	887	0.00
Swap Gift Card	0.00	4	0.00	<b>TOTAL:</b>			<b>0.00</b>
<b>TOTAL:</b>			<b>-39,757.50</b>				
<b>NET PREPAID CARD SALES:</b>			<b>-28,576.45</b>				
<b>OTHER PREPAIDS SOLD</b>							

# General Sales Report

Tower Express Car Wash  
Tower Car Wash

Sat 01/01/2011 12:00:00am  
Sat 12/31/2011 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
TOTAL TO ACCOUNT FOR:				513,533.14			
CASH DRAWER-							
Beginning Drawer		0	0.00				
Ending Drawer		5	-217.00				
TOTAL:			-217.00				
TOTAL XPT CASH:				-76,064.00			
HOUSE ACCOUNTS-							
Employee Charge		0	0.00				
House Acct Charge		0	0.00				
House Acct Payment		0	0.00				
NET CHANGE IN A/R:			0.00				
OVER / SHORT (-)							
CASH:			-25,295.68				
XPT ACCEPTORS:			12.00				
XPT DISPENSERS:			-15.00				
CHECK:			0.00				
TOTAL:			-25,298.68				
CREDIT CARD:							
American Express			-37,684.85				
Discover			-8,142.10				
Visa / MC			-365,054.82				
TOTAL:			-410,881.77				
OTHER TENDERS:							
Credit Crd - Un-Paid			-1,040.69				
TOTAL:			-1,040.69				
XPT BALANCING:			-1.00				
(Should be \$0)							
REPORT BALANCE:				30.00			
(Should be \$0)							
Cashier: _____ Empl #: _____							
Reviewed By: _____ On: _____							
Total Express Count				28,286			
Express \$/Car				7.82			
Total FS Count				14,918			
Exterior \$/Car-				21.02			
Total Car Count				43,204			
Total \$/Car				11.89			



Tower Express Car Wash  
Tower Car Wash

## General Sales Report

Sun 01/01/2012 12:00:00am  
Mon 06/25/2012 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
<b>EXPRESS SALES (Exterior Only)</b>				<b>FULL SERVICE SALES (EXTERIOR AND INTERIOR)</b>			
<b>WASH SALES-</b>				<b>FULL SERVICE WASHES-</b>			
Tower Splash	6.00	7,136	42,816.00	Tower Splash Plus	14.00	822	11,508.00
Tower Shine	9.00	4,447	40,023.00	Tower Shine Plus	19.00	3,007	57,133.00
Tower Shine w/Triple	9.00	6	54.00	Tower Supreme Plus	24.00	3,026	72,624.00
Tower Supreme	12.00	5,625	67,500.00	Hand Wax Pkg	45.00	76	3,420.00
<b>TOTAL:</b>		<b>17,214</b>	<b>150,393.00</b>	Super Clean Interior	55.00	239	13,145.00
<b>Groupon Ext Washes</b>				Tower Complete	85.00	104	8,840.00
G2 Splash Wash	6.00	705	4,230.00	<b>TOTAL:</b>		<b>7,274</b>	<b>166,670.00</b>
G2 Supreme Wash	12.00	477	5,724.00	<b>GROUPON FULL SERVICE WASHES-</b>			
Groupon TwrSupr.(12)	12.00	62	744.00	G2 Splash+ Wash	14.00	194	2,716.00
<b>TOTAL:</b>		<b>1,244</b>	<b>10,698.00</b>	Groupon TwrShne+(16)	4.00	313	1,252.00
<b>EXPRESS EXTRAS-</b>				Groupon TwrSupr+(21)	9.00	1	9.00
Rain-X	2.00	3,875	7,750.00	G2 Supreme+ Wash	24.00	159	3,816.00
<b>TOTAL:</b>		<b>3,875</b>	<b>7,750.00</b>	<b>TOTAL:</b>		<b>667</b>	<b>7,793.00</b>
<b>OTHER WASH SERVICES-</b>				<b>FULL SERVICE EXTRA SALES-</b>			
<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>	Interior Dressing	4.00	44	176.00
<b>GROSS EXPRESS SALES-</b>				A-la-carte	14.00	125	1,750.00
			<b>168,841.00</b>	<b>TOTAL:</b>		<b>169</b>	<b>1,926.00</b>
<b>LESS: WASH COUPONS-</b>				<b>GROSS FULL SERVICE</b>			
\$5 off TSP 10	-5.00	1	-5.00		<b>8,110</b>		<b>176,389.00</b>
\$5 Off VIP 25005	-5.00	99	-495.00	<b>LESS: FULL SERVICE COUPONS-</b>			
\$10 Off VIP 25005	-10.00	20	-200.00	Employee Shine +	-8.00	2	-16.00
\$3 Brake Check Promo	-3.00	368	-1,104.00	Ppd Shine + Disc	-19.00	7	-133.00
Free Express Wash	-10.00	3	-30.00	Ppd Splash + Disc	-14.00	4	-56.00
Free Tower Supreme	-12.00	2	-24.00	Ppd Supreme + Disc	-24.00	5	-120.00
\$3 Off Tower Supreme	-3.00	1	-3.00	<b>TOTAL:</b>		<b>18</b>	<b>-325.00</b>
\$2 off Ath. Card	-2.00	46	-92.00	<b>NET FULL SERVICE SALES:</b>			
\$2 off	-2.00	1,372	-2,744.00				<b>176,064.00</b>
<b>TOTAL:</b>		<b>1,912</b>	<b>-4,697.00</b>	<b>NET WASH SALES:</b>			
							<b>330,332.00</b>
<b>LESS: WASH DISCOUNTS-</b>				<b>PREPAIDS</b>			
ARM Ppd Splash Disc	-6.00	23	-138.00	<b>VIP PLANS</b>			
ARM Ppd Suprm Disc	-12.00	10	-120.00	<b>VIP PLANS SOLD-</b>			
ARM Ppd Shine+ Disc	-16.00	4	-64.00	VIP Monthly Splash	11.37	49	556.90
Ppd Splash Disc	-6.00	28	-168.00	VIP Monthly Shine	14.81	33	488.81
Employee Splash	-3.00	20	-60.00	VIPMthlyShine w/Trp	15.06	6	90.38
Employee Supreme	-6.00	12	-72.00	VIP Monthly Suprm	15.47	23	355.92
Employee Shine	-5.00	4	-20.00	VIP Monthly Splash+	24.28	2	48.55
DONATION Comp Disc.	-31.33	12	-376.00	VIP Monthly Shine+	29.50	19	560.46
Rewash-Base	-10.02	398	-3,988.00	VIPMthlyShine+w/Trp	33.39	4	133.57
Manager's Comp Disc.	-18.95	210	-3,979.00	VIP Monthly Suprm+	44.96	2	89.92
Ppd Supreme Disc	-12.00	16	-192.00	<b>TOTAL:</b>		<b>138</b>	<b>2,324.51</b>
Ppd Shine Disc	-9.00	14	-126.00	<b>VIP PLANS RECHARGED-</b>			
ARM Ppd Shine Disc	-9.00	21	-189.00	VIP Splash Rchg	19.99	246	4,917.54
Rain Check	-6.00	64	-384.00	VIP Shine Rchg	24.99	212	5,297.88
<b>TOTAL:</b>		<b>836</b>	<b>-9,876.00</b>				
<b>NET EXPRESS SALES:</b>							
		<b>25,081</b>	<b>154,268.00</b>				



# General Sales Report

Tower Express Car Wash  
Tower Car Wash

Sun 01/01/2012 12:00:00am  
Mon 06/25/2012 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
VIPShine w/Trp Rchg	24.99	79	1,974.21	Generic Gift Card	23.48	119	2,794.00
VIP Suprm Rchg	34.99	156	5,458.44	Birthday Gift Card	43.00	4	172.00
VIP Splash+ Rchg	39.99	26	1,039.74	Holiday Gift Card	26.13	15	392.00
VIP Shine+ Rchg	52.99	101	5,351.99	4 Splash Card	24.00	28	672.00
VIPShine+ w/Trp Rchg	52.99	18	953.82	4 Shine Card	36.00	14	504.00
VIP Suprm+ Rchg	67.99	39	2,651.61	4 Supreme Card	48.00	16	768.00
<b>TOTAL:</b>		<b>877</b>	<b>27,645.23</b>	4 Splash + Card	56.00	4	224.00
<b>VIP PLANS REDEEMED-</b>				4 Shine + Card	76.00	7	532.00
VIP Suprm Pkg.	0.00	556	0.00	4 Supreme + Card	96.00	5	480.00
VIP Splash Sold Pkg.	0.00	23	0.00	4 Spl Comm Donation	0.00	1	0.00
ARM Redeemer Pkg.	0.00	3,185	0.00	Rewash Supreme Plus	0.00	1	0.00
VIPShine w/T SldPkg	0.00	6	0.00	Raincheck	0.00	2	0.00
VIP Shine+ Pkg.	0.00	310	0.00	Voucher-Cash	5.45	15	81.80
VIP Shine+ Sold Pkg.	0.00	4	0.00	<b>TOTAL:</b>		<b>287</b>	<b>10,969.80</b>
VIP Suprm+ Pkg.	0.00	84	0.00	<b>PREPAID CARDS REDEEMED-</b>			
VIP Shine w/T Pkg.	0.00	349	0.00	Groupon Tower Rdmd	-12.00	62	-744.00
VIP Splash + Pkg.	0.00	79	0.00	Ind. Ppd Dollar Card	0.00	2	0.00
VIP Shine+w/Trp Pkg.	0.00	56	0.00	Ppd Gift Card Rdmd	-13.12	405	-5,315.00
VIP Shine Pkg.	0.00	716	0.00	Ppd Shine + Rdmd	-18.26	23	-420.00
VIP Shine Sold Pkg.	0.00	15	0.00	Ppd Shine Rdmd	-9.00	36	-324.00
VIP Splash Pkg.	0.00	1,035	0.00	Ppd Splash + Rdmd	-14.00	8	-112.00
VIP Suprm Sold Pkg.	0.00	10	0.00	Ppd Splash Rdmd	-6.00	67	-402.00
VIP Splash.	-6.00	1,035	-6,210.00	Ppd Supreme + Rdmd	-24.00	9	-216.00
VIP Shine.	-9.00	714	-6,426.00	Ppd Supreme Rdmd	-12.00	42	-504.00
VIP Shine w/Trp.	-12.00	349	-4,188.00	Redeem IOU CashVchr	-9.00	2	-18.00
VIP Suprm.	-12.00	555	-6,660.00	<b>TOTAL:</b>			<b>-8,055.00</b>
VIP Splash+.	-14.00	78	-1,092.00	<b>NET PREPAID CARD SALES:</b>			<b>2,914.80</b>
VIP Shine+.	-19.00	310	-5,890.00				
VIP Suprm+.	-24.00	84	-2,016.00	<b>OTHER PREPAIDS SOLD</b>			
VIPMthlyShine+w/Trp.	-24.00	56	-1,344.00	<b>GROUPON SOLD-</b>			
<b>TOTAL:</b>			<b>-33,826.00</b>	Groupon Tower Sold	0.00	75	0.00
<b>VIP PLANS REDEEMED-</b>				<b>TOTAL:</b>			<b>0.00</b>
Switch VIP Plan	0.00	13	0.00	<b>GROUPON REDEEMED:</b>			
Discontinue VIP Plan	0.00	20	0.00	G-NOW Tower Disc	-9.00	40	-360.00
Terminate VIP Plan	0.00	9	0.00	G2 Splash Wash RMD	-6.00	708	-4,248.00
VIP Splash Rfnd	-12.42	4	-49.66	G2 Supreme Wash RMD	-12.00	481	-5,772.00
VIP Shine Rfnd	-14.43	4	-57.72	G2 Splash+ Wash RMD	-14.00	194	-2,716.00
VIP Shine w/Trp Rfnd	-13.60	3	-40.79	G2 Supreme+ Wash RMD	-24.00	159	-3,816.00
VIP Suprm Rfnd	-24.53	6	-147.15	<b>TOTAL:</b>	-10.69	<b>1,582</b>	<b>-16,912.00</b>
VIP Splash+ Rfnd	-29.03	2	-58.05	<b>GROUPON PAYMENT-</b>			
VIP Shine+ Rfnd	-40.29	2	-80.58	<b>TOTAL:</b>	0.00	<b>0</b>	<b>0.00</b>
VIP Suprm+ Rfnd	-29.46	1	-29.46	<b>WEBSITE SOLD-</b>			
<b>TOTAL:</b>			<b>-463.41</b>	Birth. \$25 Gift Card	25.00	2	50.00
<b>NET VIP PLAN SALES:</b>			<b>-4,319.67</b>	Birth. \$50 Gift Card	50.00	1	50.00
<b>PREPAID CARDS</b>				Birth.\$100 Gift Card	100.00	1	100.00
<b>PREPAID CARDS SOLD-</b>				Cert Web Super Clean	55.00	2	110.00
Bonus Bucks \$100	100.00	35	3,500.00	Cert Web Wax	45.00	1	45.00
Bonus Bucks \$25	25.00	8	200.00	Club \$100 Card	100.00	2	200.00
Bonus Bucks \$50	50.00	13	650.00	Club \$50 Card	50.00	2	100.00

# General Sales Report

Tower Express Car Wash  
Tower Car Wash

Sun 01/01/2012 12:00:00am

Mon 06/25/2012 11:59:59pm

Description	Price	Quantity	Amount	Description	Price	Quantity	Amount
Hol. \$50 Gift Card	50.00	1	50.00	XPT BALANCING:			0.00
Web Splash Bonus Crd	24.00	3	72.00	(Should be \$0)			
Web Sup Bonus Card	48.00	1	48.00				
<b>TOTAL:</b>			<b>825.00</b>				
<b>NET OTHER PREPAID</b>			<b>-16,087.00</b>	<b>REPORT BALANCE:</b>			<b>0.00</b>
				(Should be \$0)			
<b>LESS PAIDOUTS-</b>							
VIP Payout	-5.64	2	-11.28	Cashier: _____ Empl #: _____			
<b>TOTAL:</b>		<b>2</b>	<b>-11.28</b>	Reviewed By: _____ On: _____			
<b>FUNDRAISERS</b>				<b>Total Express Count</b>			<b>18,458</b>
				<b>Express \$/Car</b>			<b>8.36</b>
<b>FUNDRAISERS-</b>							
<b>TOTAL:</b>		<b>0</b>	<b>0.00</b>	<b>Total FS Count</b>			<b>7,941</b>
				<b>Exterior \$/Car-</b>			<b>22.17</b>
<b>SALES TAX-</b>							
*Tax Exempt Sale	0.00	622	0.00	<b>Total Car Count</b>			<b>26,399</b>
<b>TOTAL:</b>			<b>0.00</b>	<b>Total \$/Car</b>			<b>11.85</b>
<b>TOTAL TO ACCOUNT FOR:</b>			<b>312,828.85</b>				
<b>CASH DRAWER-</b>							
Beginning Drawer		0	0.00				
Ending Drawer		0	0.00				
<b>TOTAL:</b>			<b>0.00</b>				
<b>TOTAL XPT CASH:</b>			<b>-37,119.75</b>				
<b>HOUSE ACCOUNTS-</b>							
Employee Charge		0	0.00				
House Acct Charge		0	0.00				
House Acct Payment		0	0.00				
<b>NET CHANGE IN A/R:</b>			<b>0.00</b>				
<b>OVER / SHORT (-)</b>							
<b>CASH:</b>			<b>-2,682.00</b>				
<b>XPT ACCEPTORS:</b>			<b>-6.00</b>				
<b>XPT DISPENSERS:</b>			<b>-542.00</b>				
<b>CHECK:</b>			<b>0.00</b>				
<b>TOTAL:</b>			<b>-3,230.00</b>				
<b>CREDIT CARD:</b>							
American Express			-24,815.20				
Discover			-6,279.14				
Visa / MC			-240,417.08				
<b>TOTAL:</b>			<b>-271,511.42</b>				
<b>OTHER TENDERS:</b>							
Credit Crd - Pending			0.00				
Credit Crd - Un-Paid			-967.68				
<b>TOTAL:</b>			<b>-967.68</b>				



Tower Car Wash, Inc.  
 STATEMENT OF REVENUE AND EXPENSES  
 For the Year Ended  
 December 31, 2010

**Income****WASH SALES**

Sales - Express Washes	18,482.80
Sales - Full Service Washes	13,717.00
Other Revenue	-
Interest Income	-
Prepaid Sales	3,335.00

**Total Income****35,534.80****CONTRA INCOME ACCOUNTS**

Cost of Sales	1,249.25
Fundraiser Cards	18.80
Discounts and Coupons	13,210.00
Total Contra Income Accounts	<b>14,478.05</b>

**NET REVENUE****21,056.75****EXPENSES:**

Human Resources	24,808.40
Marketing	1,656.82
Insurance	6,289.94
Professional Services	2,132.09
Outside Services	-
Equipment Rental	-
Repair & Maintenance	1,895.34
Taxes	4,547.03
Administrative	1,771.78
Travel & Entertainment	19.78
Utilities	127.64

**TOTAL EXPENSES****43,248.82****NET OPERATING INCOME****(22,192.07)****OTHER INCOME/EXPENSES**

Other Expenses	
Interest	11,727.39
Total Other Expense	11,727.39

**NET OTHER INCOME****(11,727.39)****NET INCOME****(33,919.46)**

Tower Car Wash, Inc.  
 STATEMENT OF REVENUE AND EXPENSES  
 For the Year Ended  
 December 31, 2011

**Income****WASH SALES**

Sales - Express Washes	245,751.00
Sales - Full Service Washes	310,787.45
Other Revenue	9,813.21
Interest Income	2,320.59
Prepaid Sales	49,882.16

**Total Income****618,554.41****CONTRA INCOME ACCOUNTS**

Cost of Sales	107,950.35
Fundraiser Cards	58.04
Discounts and Coupons	35,096.37
Total Contra Income Accounts	<b>143,104.76</b>

**NET REVENUE****475,449.65****EXPENSES:**

Human Resources	268,986.79
Marketing	13,029.10
Insurance	10,972.23
Professional Services	37,893.10
Outside Services	12,758.01
Equipment Rental	2,598.95
Repair & Maintenance	8,009.93
Taxes	54,564.31
Administrative	6,288.59
Travel & Entertainment	215.35
Utilities	59,468.42

**TOTAL EXPENSES****474,784.78****NET OPERATING INCOME****664.87****OTHER INCOME/EXPENSES**

Other Expenses	
Interest	104,728.62
Non-recurring Expenses	18,000.00
Total Other Expense	122,728.62

**NET OTHER INCOME****(122,728.62)****NET INCOME****(122,063.75)**

**Tower Car Wash, Inc.**  
**STATEMENT OF REVENUES AND EXPENSES**

For the Trailing 12 Months Ended December 31, 2011

	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11	Jul 11	Aug 11	Sep 11	Oct 11	Nov 11	Dec 11	Total
<b>Income</b>													
Sales - Express Washes \$	5733.00	12279.00	21079.05	33384.00	23841.00	24816.00	22575.00	23523.00	24423.00	22236.00	15873.00	15988.95	245751.00
Sales - Full Service Washes	15964.00	22551.00	29039.00	32478.00	29001.99	27296.00	30136.00	27517.00	28379.00	28754.45	20754.00	18917.01	310787.45
All Other Sales	0.00	97.74	1958.68	2626.17	1145.00	4238.20	5600.09	4871.11	4828.11	12947.25	4250.10	-42562.45	0.00
Other Revenue	0.00	0.00	0.00	435.00	138.00	210.00	339.52	449.35	489.79	31.21	76.54	7643.80	9813.21
Interest Income	0.00	0.00	0.00	596.91	0.00	1064.09	0.00	166.97	492.62	0.00	0.00	0.00	2320.59
PrePaid Sales	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5024.71	44857.45	49882.16
<b>Total Income</b>	<b>21697.00</b>	<b>34927.74</b>	<b>52076.73</b>	<b>69520.08</b>	<b>54125.99</b>	<b>57624.29</b>	<b>58650.61</b>	<b>56527.43</b>	<b>58612.52</b>	<b>63968.91</b>	<b>45978.35</b>	<b>44844.76</b>	<b>618554.41</b>
<b>Contra Income Accounts</b>													
Cost of Sales	1015.16	3225.15	6980.42	9641.80	11787.91	14791.36	13047.72	12704.63	9659.88	11926.61	5968.73	7200.98	107950.35
Fundraiser Cards	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	58.04	0.00	0.00	58.04
Discounts and Coupons	2788.00	3752.00	3748.50	2837.50	2162.58	2410.50	2791.00	2529.00	2053.00	1723.29	2295.00	6006.00	35096.37
<b>Total Contra Income Accounts</b>	<b>3803.16</b>	<b>6977.15</b>	<b>10728.92</b>	<b>12479.30</b>	<b>13950.49</b>	<b>17201.86</b>	<b>15838.72</b>	<b>15233.63</b>	<b>11712.88</b>	<b>13707.94</b>	<b>8263.73</b>	<b>13206.98</b>	<b>143104.76</b>
<b>Gross Profit</b>	<b>17893.84</b>	<b>27950.59</b>	<b>41347.81</b>	<b>57040.78</b>	<b>40175.50</b>	<b>40422.43</b>	<b>42811.89</b>	<b>41293.80</b>	<b>46899.64</b>	<b>50260.97</b>	<b>37714.62</b>	<b>31637.78</b>	<b>475449.65</b>
<b>Operating Expenses</b>													
Human Resources	14229.97	14757.40	24999.21	20806.13	28025.32	20481.03	21176.97	21886.52	32538.54	20923.41	18707.83	30454.46	268986.79
Marketing	18.80	556.32	941.10	1080.00	125.00	1896.44	1178.73	1748.99	598.70	1353.39	646.97	2884.66	13029.10
Insurance	0.00	0.00	1098.99	1098.99	1623.23	395.47	658.30	0.00	2461.20	1027.19	1026.98	1581.88	10972.23
Professional Services	550.00	1750.00	1500.00	1000.00	11275.00	1600.00	465.00	500.00	7000.00	3523.21	2193.41	6536.48	37893.10
Outside Services	0.00	0.00	0.00	0.00	1160.91	1812.00	1222.52	941.96	2328.46	2190.75	1009.17	2092.24	12758.01
Equipment Rental	0.00	183.08	63.87	0.00	127.74	63.87	500.00	63.87	0.00	63.87	129.87	1402.78	2598.95
Repair & Maintenance	117.45	289.26	494.32	310.00	-117.45	557.11	597.86	819.41	1877.86	613.45	178.67	2271.99	8009.93
Taxes	2500.00	4500.00	2500.00	2500.00	2500.00	2500.00	2500.00	2500.00	2500.00	2500.00	2500.00	25064.31	54564.31
Administrative	328.78	466.75	556.95	0.00	1024.11	321.50	740.10	444.26	585.88	431.10	770.68	618.48	6288.59
Travel & Entertainment	0.00	25.99	0.00	0.00	0.00	0.00	0.00	20.00	35.00	86.36	48.00	0.00	215.35
Utilities	2756.44	3121.59	4187.50	5243.04	5186.35	4141.28	4720.54	5294.43	4829.15	4816.86	4749.38	10421.86	59468.42
<b>Total Operating Expenses</b>	<b>20501.44</b>	<b>25650.39</b>	<b>36341.94</b>	<b>32038.16</b>	<b>50930.21</b>	<b>33768.70</b>	<b>33760.02</b>	<b>34219.44</b>	<b>54754.79</b>	<b>37529.59</b>	<b>31960.96</b>	<b>83329.14</b>	<b>474784.78</b>
<b>Net Operating Income</b>	<b>-2607.60</b>	<b>2300.20</b>	<b>5005.87</b>	<b>25002.62</b>	<b>-10754.71</b>	<b>6653.73</b>	<b>9051.87</b>	<b>7074.36</b>	<b>-7855.15</b>	<b>12731.38</b>	<b>5753.66</b>	<b>-51691.36</b>	<b>664.87</b>
<b>Other Income/Expenses</b>													
<b>Other Expenses</b>													
Interest	0.00	165.69	9315.22	15266.59	16522.26	10924.68	6817.98	0.00	0.00	1356.50	11101.42	33258.28	104728.62
Non-recurring Expenses												18000.00	18000.00
<b>Total Other Expense</b>	<b>0.00</b>	<b>165.69</b>	<b>9315.22</b>	<b>15266.59</b>	<b>16522.26</b>	<b>10924.68</b>	<b>6817.98</b>	<b>0.00</b>	<b>0.00</b>	<b>1356.50</b>	<b>11101.42</b>	<b>51258.28</b>	<b>122728.62</b>
<b>Net Other Income</b>	<b>0.00</b>	<b>-165.69</b>	<b>-9315.22</b>	<b>-15266.59</b>	<b>-16522.26</b>	<b>-10924.68</b>	<b>-6817.98</b>	<b>0.00</b>	<b>0.00</b>	<b>-1356.50</b>	<b>-11101.42</b>	<b>-51258.28</b>	<b>-122728.62</b>
<b>Net Income</b>	<b>-2607.60</b>	<b>2134.51</b>	<b>-4309.35</b>	<b>9736.03</b>	<b>-27276.97</b>	<b>-4270.95</b>	<b>2233.89</b>	<b>7074.36</b>	<b>-7855.15</b>	<b>11374.88</b>	<b>-5347.76</b>	<b>-102949.64</b>	<b>-122063.75</b>



Tower Car Wash, Inc  
**Profit & Loss**  
January through May 2012

	<u>TOTAL</u>
<b>Ordinary Income/Expense</b>	
<b>Income</b>	
500 · Wash Sales	267,288.00
510 · Extra Sales	8,109.00
520 · Prepaid Sales	48,852.99
530 · Coupons & Redeemed Prepaids	-64,533.79
550 · Other Revenue	310.07
<b>Total Income</b>	<u><b>260,026.27</b></u>
<b>Cost of Goods Sold</b>	
600 · Cost of Sales	22,754.09
<b>Total COGS</b>	<u><b>22,754.09</b></u>
<b>Gross Profit</b>	<b>237,272.18</b>
<b>Expense</b>	
750 · Human Resources	122,609.95
760 · Marketing	5,833.64
770 · Insurance Expense	7,624.38
802 · Professional Services	15,615.99
807 · Cash (over)/short	20.00
820 · Security	3,481.02
828 · Repair & Maintenance	8,751.34
840 · Taxes	22,735.00
855 · Administration	9,432.18
860 · Utilities	32,584.16
<b>Total Expense</b>	<u><b>228,687.66</b></u>
<b>Net Operating Income</b>	<b>8,584.52</b>
<b>Other Income/Expense</b>	
Other Expense	
870 · Interest	61,972.79
880 · Non-recurring Expenses	19,451.80
<b>Total Other Expense</b>	<u><b>81,424.59</b></u>
<b>Net Other Income</b>	<u><b>-81,424.59</b></u>
<b>Net Income</b>	<u><u><b>-72,840.07</b></u></u>

**Tower Car Wash, Inc**  
**Profit & Loss**  
January through May 2012

	Jan 12	Feb 12	Mar 12	Apr 12	May 12	TOTAL
<b>Ordinary Income/Expense</b>						
Income						
500 · Wash Sales						
501 · Express Wash	28,471.33	28,041.51	11,833.16	33,186.00	25,311.00	126,843.00
502 · Full Service	24,374.00	22,060.00	32,985.00	34,296.00	26,730.00	140,445.00
500 · Wash Sales - Other	0.00	0.00	0.00	-100.61	100.61	0.00
Total 500 · Wash Sales	52,845.33	50,101.51	44,818.16	67,381.39	52,141.61	267,288.00
510 · Extra Sales						
511 · Express Extra	916.00	776.00	1,604.00	1,752.00	1,322.00	6,370.00
512 · Full Service Extra	327.00	251.00	520.00	402.00	239.00	1,739.00
Total 510 · Extra Sales	1,243.00	1,027.00	2,124.00	2,154.00	1,561.00	8,109.00
520 · Prepaid Sales						
520.1 · VIP Plans	4,272.40	4,456.01	4,744.04	5,196.14	5,595.89	24,264.48
520.2 · Prepaid Cards	1,324.00	1,384.00	2,081.76	2,192.75	1,974.00	8,956.51
520.3 · Other Prepaid	4,066.00	2,882.00	4,242.00	4,342.00	100.00	15,632.00
Total 520 · Prepaid Sales	9,662.40	8,722.01	11,067.80	11,730.89	7,669.89	48,852.99
530 · Coupons & Redeemed Prepaids						
530.1 · Coupons	-629.00	-719.00	-1,134.00	-4,817.00	-792.00	-8,091.00
530.2 · Discounts	-1,703.00	-1,329.00	-1,924.00	-1,810.00	-1,700.00	-8,466.00
530.3 · Prepaids Redeemds	-8,920.40	-7,756.02	-12,083.51	-9,054.29	-9,265.86	-47,080.08
530.4 · Unfunded Credit Card Charges	-182.94	-197.94	-217.91	-130.97	-139.95	-869.71
530.5 · Refunds	0.00	-27.00	0.00	0.00	0.00	-27.00
Total 530 · Coupons & Redeemed Prepaids	-11,435.34	-10,028.96	-15,359.42	-15,812.26	-11,897.81	-64,533.79
550 · Other Revenue	34.55	0.00	116.53	106.80	52.19	310.07
Total Income	52,349.94	49,821.56	42,767.07	65,560.82	49,526.88	260,026.27
Cost of Goods Sold						
600 · Cost of Sales						
603 · Credit Card Fees	926.31	1,163.33	836.43	1,543.35	1,638.72	6,108.14
601 · Chemicals - Tunnel	1,938.87	3,467.76	1,093.85	2,599.39	1,798.04	10,897.91
602 · Chemicals - Full Service	2,487.08	2,283.13	283.50	501.81	192.52	5,748.04
Total 600 · Cost of Sales	5,352.26	6,914.22	2,213.78	4,644.55	3,629.28	22,754.09
Total COGS	5,352.26	6,914.22	2,213.78	4,644.55	3,629.28	22,754.09
Gross Profit	46,997.68	42,907.34	40,553.29	60,916.27	45,897.60	237,272.18
Expense						
750 · Human Resources						
757.1 · Labor Hourly	13,057.25	10,895.81	16,457.19	17,594.15	19,926.48	77,930.88
757.2 · Salary - Manager	4,461.54	5,130.77	2,230.77	0.00	0.00	11,823.08
757.3 · Salary - Marketing	2,923.20	3,361.68	2,943.22	3,195.50	438.48	12,862.08
757.4 · Salary - Accountant	1,254.00	987.25	1,034.00	1,309.00	864.13	5,448.38
757.5 · FICA (Employer's Share)	1,679.89	1,545.08	2,019.74	1,661.52	4,865.53	11,771.76
757.6 · Unemployment Taxes	533.26	491.66	605.27	425.71	456.77	2,512.67
757.8 · Uniforms	-60.20	-40.00	-120.00	-105.00	586.30	261.10
Total 750 · Human Resources	23,848.94	22,372.25	25,170.19	24,080.88	27,137.69	122,609.95

**Tower Car Wash, Inc**  
**Profit & Loss**  
**January through May 2012**

	Jan 12	Feb 12	Mar 12	Apr 12	May 12	TOTAL
<b>760 · Marketing</b>						
760.1 · Cable Services	0.00	0.00	0.00	0.00	0.00	0.00
760.25 · Electronic Signage	474.10	237.05	237.05	237.05	0.00	1,185.25
760.5 · Marketing Supplies	623.88	149.70	96.39	90.00	0.00	959.97
760.8 · Other Promotions	611.36	1,104.71	190.00	0.00	0.00	1,906.07
760.3 · Online Marketing	9.95	147.98	32.85	0.00	0.00	190.78
760.6 · Printing & Reproduction	351.55	409.44	170.15	0.00	0.00	931.14
760.4 · Web Site & soc. Media Services	0.00	0.00	0.00	0.00	660.43	660.43
<b>Total 760 · Marketing</b>	<b>2,070.84</b>	<b>2,048.88</b>	<b>726.44</b>	<b>327.05</b>	<b>660.43</b>	<b>5,833.64</b>
<b>770 · Insurance Expense</b>						
770.1 · Property Coverage	999.38	1,006.38	513.19	408.00	1,006.38	3,933.33
770.2 · Other Insurance	0.00	1,581.88	527.29	0.00	1,581.88	3,691.05
<b>Total 770 · Insurance Expense</b>	<b>999.38</b>	<b>2,588.26</b>	<b>1,040.48</b>	<b>408.00</b>	<b>2,588.26</b>	<b>7,624.38</b>
<b>802 · Professional Services</b>						
802.1 · Management Fees	2,577.00	2,402.00	3,200.00	3,941.14	2,970.85	15,090.99
802.2 · Accounting & Legal	525.00	0.00	0.00	0.00	0.00	525.00
<b>Total 802 · Professional Services</b>	<b>3,102.00</b>	<b>2,402.00</b>	<b>3,200.00</b>	<b>3,941.14</b>	<b>2,970.85</b>	<b>15,615.99</b>
<b>807 · Cash (over)/short</b>	<b>20.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>20.00</b>
<b>820 · Security</b>						
820.1 · Video Surveillance System	619.56	619.56	619.56	619.56	619.56	3,097.80
820.2 · ADT Security Services	63.87	127.74	63.87	0.00	127.74	383.22
<b>Total 820 · Security</b>	<b>683.43</b>	<b>747.30</b>	<b>683.43</b>	<b>619.56</b>	<b>747.30</b>	<b>3,481.02</b>
<b>828 · Repair &amp; Maintenance</b>						
828.1 · Parts & Equipment	80.05	979.24	1,578.29	1,077.44	1,227.15	4,942.17
828.2 · Building & Grounds	1,485.59	8.64	341.31	0.00	0.00	1,835.54
828.3 · Supplies & Janitorial	0.00	198.00	350.04	202.41	40.33	790.78
828.4 · Damage Claims	140.51	456.80	255.66	250.00	79.88	1,182.85
<b>Total 828 · Repair &amp; Maintenance</b>	<b>1,706.15</b>	<b>1,642.68</b>	<b>2,525.30</b>	<b>1,529.85</b>	<b>1,347.36</b>	<b>8,751.34</b>
<b>840 · Taxes</b>						
840.1 · Ad Valorem	3,353.00	3,353.00	3,353.00	3,353.00	3,353.00	16,765.00
840.3 · Personal Property Taxes (Equip)	1,194.00	1,194.00	1,194.00	1,194.00	1,194.00	5,970.00
<b>Total 840 · Taxes</b>	<b>4,547.00</b>	<b>4,547.00</b>	<b>4,547.00</b>	<b>4,547.00</b>	<b>4,547.00</b>	<b>22,735.00</b>
<b>855 · Administration</b>						
855.1 · Telephone & Internet	372.88	368.62	557.86	352.03	416.41	2,067.80
855.2 · Copy Machine Rental	0.00	0.00	314.09	0.00	0.00	314.09
855.4 · Bank Service Charges	12.00	12.21	39.00	16.99	12.94	93.14
855.5 · Office Supplies	464.27	760.95	436.65	411.62	256.04	2,329.53
855.6 · Dues & Subscriptions	0.00	0.00	86.59	0.00	-7.50	79.09
855.7 · Travel Expense	87.91	118.99	158.38	0.00	60.00	425.28
855.8 · Technical Support	433.08	1,491.49	433.08	433.08	433.08	3,223.81
855.9 · Other	750.00	36.64	72.86	7.33	32.61	899.44
<b>Total 855 · Administration</b>	<b>2,120.14</b>	<b>2,788.90</b>	<b>2,098.51</b>	<b>1,221.05</b>	<b>1,203.58</b>	<b>9,432.18</b>



**Tower Car Wash, Inc**  
**Profit & Loss**  
**January through May 2012**

	Jan 12	Feb 12	Mar 12	Apr 12	May 12	TOTAL
<b>860 · Utilities</b>						
860.3 · Water & Wastewater	3,606.22	2,576.45	1,843.56	2,206.00	1,991.00	12,223.23
860.1 · Electricity	6,172.88	3,119.44	3,352.67	3,741.00	3,454.00	19,839.99
860.2 · Waste Disposal	169.08	87.52	87.52	87.52	89.30	520.94
<b>Total 860 · Utilities</b>	<b>9,948.18</b>	<b>5,783.41</b>	<b>5,283.75</b>	<b>6,034.52</b>	<b>5,534.30</b>	<b>32,584.16</b>
<b>Total Expense</b>	<b>49,046.06</b>	<b>44,920.68</b>	<b>45,275.10</b>	<b>42,709.05</b>	<b>46,736.77</b>	<b>228,687.66</b>
<b>Net Operating Income</b>	<b>-2,048.38</b>	<b>-2,013.34</b>	<b>-4,721.81</b>	<b>18,207.22</b>	<b>-839.17</b>	<b>8,584.52</b>
<b>Other Income/Expense</b>						
<b>Other Expense</b>						
<b>870 · Other Expenses</b>						
870.5 · Interest Zilker	0.00	0.00	0.00	502.50	833.71	1,336.21
870.1 · Interest First Mortgage	6,622.82	11,855.75	6,932.07	8,644.18	9,774.58	43,829.40
870.2 · Interest Second Mortgage	4,730.94	-80.40	4,701.19	0.00	2,339.40	11,691.13
870.4 · Fees-SBA Loan	2,046.42	0.00	2,046.42	0.00	1,023.21	5,116.05
<b>Total 870 · Other Expenses</b>	<b>13,400.18</b>	<b>11,775.35</b>	<b>13,679.68</b>	<b>9,146.68</b>	<b>13,970.90</b>	<b>61,972.79</b>
880 · Non-recurring Expenses	9,000.00	2,454.00	6,347.80	0.00	1,650.00	19,451.80
<b>Total Other Expense</b>	<b>22,400.18</b>	<b>14,229.35</b>	<b>20,027.48</b>	<b>9,146.68</b>	<b>15,620.90</b>	<b>81,424.59</b>
<b>Net Other Income</b>	<b>-22,400.18</b>	<b>-14,229.35</b>	<b>-20,027.48</b>	<b>-9,146.68</b>	<b>-15,620.90</b>	<b>-81,424.59</b>
<b>Net Income</b>	<b>-24,448.56</b>	<b>-16,242.69</b>	<b>-24,749.29</b>	<b>9,060.54</b>	<b>-16,460.07</b>	<b>-72,840.07</b>

EXHIBIT 4

1 chose not to put it there.

2 Q. Okay. Do you see in Mr. Quick's e-mail of  
3 October 18th to you and Brian King. He asks, "What is  
4 wrong with them? They look pretty much like the faces  
5 on the UT Tower."

6 A. I don't know. Where is that e-mail? Oh, this  
7 one?

8 Q. Yes, sir. Exhibit 9.

9 A. That may have been part of my -- part of my  
10 reason. I didn't want it to look like the UT Tower  
11 clock face.

12 Q. Have you told anybody previously you didn't  
13 want it to look like the UT Tower clock face?

14 A. I don't think so.

15 Q. Can you think of any reason why Mr. Quick might  
16 have had the impression that it was supposed to look  
17 like the faces on the UT Tower?

18 A. Well, you know, I think there was in some cases  
19 a loose -- loose language among contractors about what  
20 they -- you know, what they were to build. But I think  
21 I was pretty clear. And so what they may have  
22 interpreted or wanted or how they chose to communicate  
23 with one another about it, I have no control over.

24 Q. Do you recall when it was that you made the  
25 decision to remove the clock face that had been

1 Cruz to your recollection?

2 A. I don't believe so.

3 Q. So what did you and Ms. Rhodes talk about in  
4 terms of colors for the logo?

5 A. I told her that I wanted it to have -- be blue  
6 and orange, but specifically not the trademark orange  
7 that the University has. She assured me that it was  
8 not.

9 Q. She assured you that it was not the UT burnt  
10 orange?

11 A. Yes.

12 Q. Okay. Can you give me any explanation, then,  
13 why she would say in her e-mail to you -- I'm sorry, her  
14 e-mail to Nando, on May 28th, 2010, "The UT orange and  
15 dark blue will definitely be colors we'll use"?

16 A. I have no idea about that. I wasn't aware of  
17 that.

18 Q. But you told her specifically not to use UT's  
19 orange?

20 A. Yes. As I recall, she gave me a pallet of  
21 colors, and we made sure not to use that shade of  
22 orange.

23 Q. And is it your belief that the current logo  
24 does not use UT's shade of orange?

25 A. Yes.

1 Q. Let me hand you what has been marked as  
2 Exhibit 11. I'm sorry. This was previously marked in  
3 an earlier deposition as Exhibit 11. Do you see the  
4 e-mail in the middle of the page from Felipe Cruz to  
5 Amber, dated 4 July, 2010?

6 A. Yes.

7 Q. And do you see in the -- starting at the end of  
8 the second line of that e-mail, Mr. Cruz says, "I did  
9 choose PMS 159 for the UT burnt orange as per their  
10 official school color"?

11 A. I see that, yes.

12 Q. Is it your understanding that Mr. Cruz is not  
13 making an accurate statement there?

14 A. Well, if -- this is the first time I've seen  
15 this, but I don't believe the actual orange that we  
16 used, irrespective of what he's communicating back and  
17 forth to Amber, was any trademark shade of orange.

18 Q. Are you distinguishing between whether UT had  
19 their shade of orange trademarked or whether it was the  
20 same shade of orange that UT uses?

21 A. Well, it was my understanding that UT had or  
22 has a trademark on a particular shade of burnt orange,  
23 and I just recall specifying that we did not want to  
24 violate any trademarks and to not -- to ensure that we  
25 should not use that color.



1 A. Yes.

2 Q. -- and magazines and things like that, correct?

3 A. Correct.

4 Q. Do you ever review the printing specs for those  
5 materials before they go out?

6 A. Sometimes. I know that immediately after  
7 receiving that first letter from Mr. Barber, I  
8 instructed our people to make sure that we have a  
9 disclaimer on anything that's printed that we are not  
10 associated with the University of Texas, and I believe  
11 that appears on any and all of our printed materials.

12 Q. Who made the decision to add the disclaimer to  
13 all of your printed materials?

14 A. I did.

15 Q. Did you consult with anybody prior to making  
16 that decision?

17 A. Mr. Barber.

18 Q. Did Mr. Barber ask you to put a disclaimer on  
19 your printed materials?

20 A. Well, let me be a little more clearer.  
21 Mr. Barber's letter was clear enough I felt that I  
22 should demonstrate that, you know, I want to go the  
23 extra mile, and I think that's what I've done. And  
24 that's one of the things that I've done, to go the extra  
25 mile to make sure that it's clear that I'm not trying to

1 whole tower thing is a big distraction, and I would  
2 prefer not to have the distractions. I just want to run  
3 my business and keep my 20, 25 people employed and do a  
4 service for the community.

5 Q. If UT had never complained and this lawsuit  
6 never occurred, do you think you would have used the  
7 orange option to light the tower?

8 A. I'm not sure.

9 Q. I would like to show what's been marked as  
10 Exhibit 14. It appears to me that Shawna seems to think  
11 that you did discuss mimicking the UT Tower with the  
12 lighting. Do you recall that conversation?

13 A. Well, these are her words and perhaps we did.  
14 Like I said, I don't recall every discussion we had with  
15 her. There's no question that we have the ability to  
16 light it orange. And she was excited about that. A lot  
17 of people were excited about that. A lot of people have  
18 a lot of expectations about some of these things, but we  
19 just haven't done so.

20 Q. Okay.

21 (Exhibit No. 26 marked)

22 Q. (By Mr. Meleen) I'm handing you what has been  
23 marked as Exhibit 26. This is a compilation of  
24 materials showing the UT Tower, some photographs,  
25 daytime, nighttime, some information on Tower tours, and

1 orange when UT wins, no.

2 Q. Do you light it orange other times?

3 A. We have the ability to do so, but we have not  
4 done so.

5 Q. Did you ever talk with Shawna about -- I'm  
6 going to call her Shawna, because I can't really  
7 pronounce her last name, if that's all right with you.

8 Did you ever talk to Shawna about doing  
9 lighting that would copy or mimic the UT Tower lighting?

10 A. I think with the -- I think that was mentioned,  
11 sure. Yeah.

12 Q. And mentioned by whom?

13 A. Excuse me. Let me correct myself. Mimic, no.  
14 But could we light the tower orange? Yes, we could.  
15 Have we done so? No, we have not, other than just going  
16 through testing as to the variety of things that we can  
17 do. We can do almost any colors. We can just do a lot  
18 of things.

19 Q. Why have you not lit it orange?

20 A. Just haven't chosen to do so.

21 Q. It doesn't have anything to do with this  
22 lawsuit?

23 A. Well, it's not my nature to be provocative.  
24 And just all we want to do is run our business, wash  
25 cars, and do a good job for our customers. And this

1 that -- I frankly don't -- I just remember that some --  
2 it came up in a discussion at some point in time.

3 Q. Did it come up in any discussions with any of  
4 the contractors or subcontractors saying, you know, Hey,  
5 is this really okay to do? Are you going to get in  
6 trouble with the University?

7 A. I think it may have been discussed.

8 Q. And do you remember who brought that up?

9 A. No. I just referred it to my architect, and he  
10 had instructions to make sure that we weren't violating  
11 any trademarks. He assured me that we -- it's not a  
12 replica.

13 Q. Did he point out any specifics -- specific  
14 details that he was changing to avoid being a replica?

15 A. No, not to my recollection.

16 Q. I would like to hand you what was previously  
17 marked as Exhibit 18. We talked earlier about Scott  
18 Johnston at Westport. Do you recall that?

19 A. Yes.

20 Q. And what is your understanding of  
21 Mr. Johnston's position at Westport?

22 A. He's the owner.

23 Q. Do you recall or can you identify this as an  
24 e-mail exchange between yourself and Mr. Johnston on  
25 October 19th, 2010?

1 2010?

2 A. Correct.

3 Q. Was that a grand opening event?

4 A. Yes, that was our -- that was our grand  
5 opening.

6 Q. And you had a software technician out and all  
7 of that?

8 A. Yes.

9 Q. The punch list was not complete at that time?

10 A. No.

11 Q. But that's where you would say it was  
12 substantially complete?

13 A. Yes. I had a Certificate of Occupancy and all  
14 of that from the City.

15 Q. Did you -- did your concerns with Wesport  
16 develop into more of a formal dispute?

17 A. Yes.

18 Q. How so?

19 A. Developed into a lawsuit.

20 Q. And what -- what was the basis of that lawsuit?

21 A. You don't have a copy of it?

22 Q. I've got some information about it, but I would  
23 like to know your description.

24 A. It's pretty well spelled out. They're suing  
25 me, and I'm suing them.

1 Q. How would you define the benefits of delaying?

2 A. Well, there would be a cost. Not many benefits  
3 of delaying it. I could have stated that more clearly.  
4 The -- I couldn't justify delaying it due to the cost of  
5 delaying it.

6 Q. The cost of delay essentially being continuing  
7 to not make any revenue, right?

8 A. That's part of it.

9 Q. Are there additional costs?

10 A. Well, I had employees that we had trained. I  
11 had some of which were on the payroll already. Others,  
12 we had gone through an expensive training program.  
13 Things like that.

14 Q. Okay. Do you know what the current status of  
15 your lawsuit with Westport is? Meaning, you've answered  
16 and filed a counterclaim you indicated?

17 A. Yes.

18 Q. Have you had settlement discussions with  
19 Westport?

20 A. My lawyer is talking to their lawyer.

21 Q. Who is your lawyer in that case?

22 A. Cindy Bourland.

23 Q. Do you know what firm she's at?

24 A. B-o-u-r-l-a-n-d. Bourland and Bourland, or the  
25 Bourland Law Firm. I'm not sure of the exact style of

## EXHIBIT 5

1 Q. And the first color he wanted it lit was  
2 orange?

3 A. Orange.

4 Q. And what is the University of Texas school  
5 color?

6 A. Orange.

7 Q. Did you have any other conversations with him  
8 about his love for UT, or can you think of any of them  
9 in detail?

10 A. I mean, we, you know, had just general  
11 conversations about, you know, what -- just general  
12 stuff, just kind of off-the-cuff stuff. We'd make jokes  
13 with him about an Aggie is the one that raises Bevo. I  
14 don't know, we just -- you know, I can't recall anything  
15 explicit, just that he was a die-hard Longhorn. Any  
16 time we jabbed him, he didn't like that.

17 Q. Did he ever reference University of Texas in  
18 regard to his car wash?

19 A. Not that I ever heard. Again, the only comment  
20 was the first one that we asked, is this -- do you think  
21 you'd have any problems, and it was never really brought  
22 up that it was the UT Tower, per se.

23 Q. Why did you, or whoever asked the question,  
24 believe that it was possible that Mr. Tesch might run  
25 into problems with the University of Texas?



1 A. I don't know, to be honest. I just remember it  
2 being brought up. You know, like I said, the first  
3 question brought up was, this looks like the Tower  
4 downtown. And he said, No, it's a different tower. And  
5 at that point, it was kind of left alone. Just, Okay,  
6 if you say so.

7 (Exhibit No. 17 marked)

8 Q. (By Mr. Matthysse) I'm showing you,  
9 Mr. Johnston, what's being marked as Exhibit 17. And  
10 the bottom e-mail there on that page, is from Mr. Ralph  
11 Quick.

12 A. Uh-huh.

13 Q. And what date is that?

14 A. That is March the 4th, 2011.

15 Q. And the e-mail is to Bob Tesch in regards to  
16 training session for the tower lighting on March 7th of  
17 this year, 2011.

18 A. Okay.

19 Q. Do you have any knowledge in regards to that  
20 training session?

21 A. Other than I saw the e-mails as they came  
22 through.

23 Q. Were you there for the lighting?

24 A. No, I was not.

25 Q. Have you seen the Tower Car Wash lit?

EXHIBIT 6

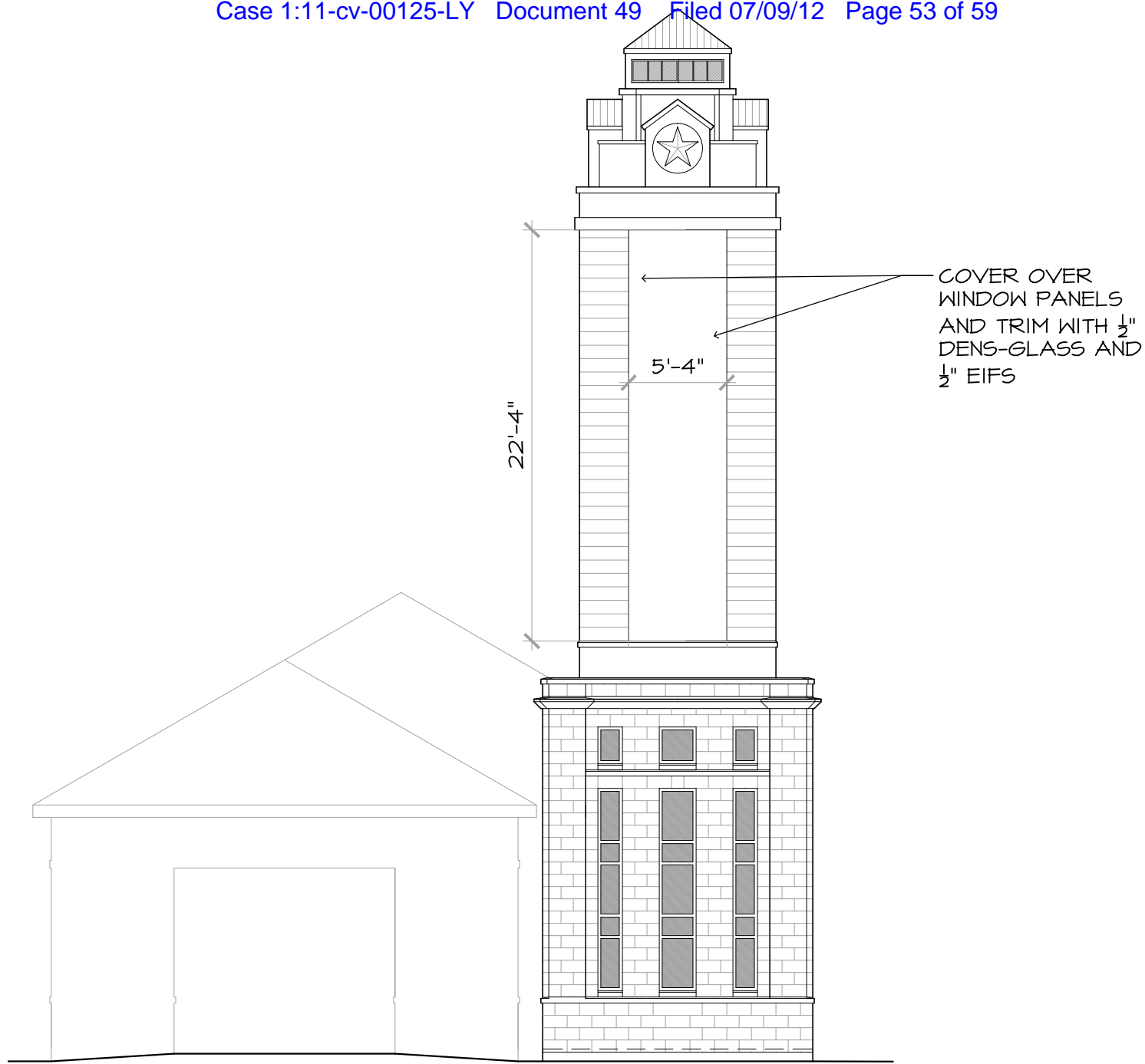






EXHIBIT 7





# TOWER CAR WASH

## CEDAR PARK, TX

TOWER MODIFICATION #16

Trent Clark-TX registration-17084 PRELIMINARY-NOT FOR CONSTRUCTION, These drawings are incomplete and may not be used for regulatory approval, permit or construction

07-02-12

A PLUS DESIGN GROUP

EXHIBIT 8

1 companies such as Bank of America, for credit card services;  
2 the University's got a credit union for credit card services,  
3 AT&T for wireless services, Time Warner for cable television  
4 services. There's a fairly significant list of sponsors who  
5 provide services, as opposed to product.

6 Q. Okay.

7 A. Or physical product, I think is how you said it.

8 Q. Sure. No, I understand. Okay.

9 If someone wanted a sponsorship from the University  
10 to use the marks, would they have to go through IMG?

11 A. Yes.

12 Q. I'm handing you what's being marked as Exhibit 7.

13 (Deposition Exhibit No. 7 marked for  
14 identification.)

15 A. (Peruses document.)

16 Q. Could you read the first paragraph for me?

17 A. The whole paragraph?

18 Q. Yes, please.

19 A. "It was nice to meet you this afternoon. Per your  
20 request, I talked to UT about whether they would have any  
21 interest in discussing a license for your use of the UT tower  
22 trademark, and unfortunately the answer is no. It's nothing  
23 personal to you or your business; rather, UT's general and  
24 longstanding policy is that they do not grant licenses to use  
25 their marks to services businesses, for a variety of reasons."

1 Q. Is that an accurate statement?

2 A. Yes.

3 Q. And who did that statement come from?

4 A. Bill Barber.

5 Q. Is he an attorney for the University?

6 A. He is an attorney with Pirkey Barber.

7 Q. Is the University his client?

8 A. Yes.

9 Q. Did the University consider granting Mr. Tesch a  
10 sponsorship through IMG?

11 A. I don't believe that that process was started.

12 Q. Do you know why that wasn't started?

13 MR. MATTHYSSE: Objection; calls for  
14 speculation.

15 A. No, I don't.

16 Q. (By Mr. Jones) Has the University ever granted a  
17 sponsorship to a car wash?

18 A. I don't know.

19 Q. I'm going to hand you now what's being marked as  
20 Exhibit 8.

21 (Deposition Exhibit No. 8 marked for  
22 identification.)

23 A. (Peruses document.)

24 Q. Have you ever seen this before?

25 A. Yes.



## EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BOARD OF REGENTS,	§	
THE UNIVERSITY OF TEXAS	§	
SYSTEM,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:11-cv-00125-LY
	§	
TOWER CAR WASH, INC., D/B/A	§	
TOWER EXPRESS CAR WASH,	§	
ROBERT E. TESCH, and TESCH &	§	
ASSOCIATES, INC.,	§	
Defendants.	§	

**Proposed Order**

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

An injunction be granted in accordance with the following terms:

1. Structural changes be made to the tower in accordance with attached Exhibit 7.
2. The Tower be painted in a color other than orange or white.
3. Defendants be enjoined from bathing the Tower in light.
4. Defendants modify the colors of their logo to a color other than orange or white and remove any graphic representation of a Tower in the logo.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Hon. Lee Yeakel  
U.S. District Court Judge